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Constitutional Provisions Proposed by Constitution Revision Commission Subcommittees

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MONTANA CONSTITUTIONAL CONVENTION

1971-1972

CONSTITUTIONAL PROVISIONS PROPOSED BY CONSTITUTION REVISION COMMISSION SUBCOMMITTEES

CONSTITUTIONAL CONVENTION OCCASIONAL PAPER NO. 7

PREPARED BY

MONTANA CONSTITUTIONAL CONVENTION COMMISSION

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PREFACE

The delegates to the 1971-1972 Montana Constitutional Convention will need historical, legal and comparative information about the Montana Constitution. Recognizing this need, the 1971 Legislative Assembly created the Constitutional Convention Commission and directed it to assemble and prepare essential information for the Convention.

To fulfill this responsibility, the Constitutional Convention Commission is preparing a series of research reports under the general title of Constitutional Convention Studies. In addition to the series of research reports the Commission has authorized the reprinting of certain documents for the use of Convention delegates.

This occasional paper republishes a working paper of the Constitution Revision Commission, the predecessor of the present Constitutional Convention Commission. The earlier Commission was established to "study the Montana Constitution" and had the authority to include in its report to the 42nd Legislative Assembly "a draft of any proposal for change in the Montana Constitution."

At its early Commission and Subcommittee meetings, the Constitution Revision Commission began the task of "drafting" a "proposed constitution" for Montana. The draft language appearing in this working paper had been prepared by Subcommittees of the Commission for full Commission deliberation at a meeting in December, 1969.

Based on its previous deliberations and work to date on a "proposed constitution" the Commission decided at the December Commission meeting: (1) that there was need for substantial revision and improvement in the Montana Constitution; (2) that a constitutional convention was the most feasible and desirable method of changing the Constitution; (3) the Commission should refrain from further attempts to "draft a proposed constitution," leaving that responsibility to delegates who would be elected to the convention if called; and (4) that the Commission would devote its efforts to carrying on a public information program on the need for constitutional revision.

Subsequently, the Commission undertook a major public educational program directed toward the November 1970 vote on the referendum to call the constitutional convention.

There were no further Subcommittee or Commission deliberations on the draft articles that had been prepared for the

December meeting. Consequently the draft herein published is not and should not be considered either a final draft of a proposed constitution, or even the recommendations of the entire Constitutional Revision Commission. It is neither! It is, however, a preliminary attempt at drafting a modern constitution for Montana, and as such, has value for those now charged with drafting a new Montana Constitution--the delegates to the Constitutional Convention. Because of this value, the Constitutional Convention Commission is republishing this working paper.

The reprinting of this working paper is respectfully submitted to the people of Montana and their delegates to the 1971-1972 Montana Constitutional Convention.

ALEXANDER BLEWETT

CHAIRMAN

CONSTITUTIONAL PROVISIONS PROPOSED BY CONSTITUTION REVISION COMMISSION SUBCOMMITTEES

December, 1969

W O R K I N G P A P E R

Note

The proposed constitutional provisions were prepared by the Legislative and Executive, Taxation and Finance, Local Government and Judicial Subcommittees of the Constitution Revision Commission. The proposals of the Subcommittee were never reviewed by the entire Commission.

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SUBCOMMITTEE REPORTS

REPORT OF THE LEGISLATIVE AND EXECUTIVE SUBCOMMITTEE
TO THE MONTANA CONSTITUTION REVISION COMMISSION
NOVEMBER 20, 1969

GENERAL COMMENTS

The Legislative and Executive subcommittee convened in four sessions--October 3 and 4, 1969, at the State Capitol in Helena, and October 22 and 31, 1969 in Harlowton. The substance of the subcommittee's proposals are contained in the proposed draft sections, prepared by the subcommittee, and the comments, based on committee discussion, prepared by Dale Harris, administrative assistant to the Commission. These are set forth in the Comparison of present Constitutional Provisions with Proposed Constitutional Provisions.

The subcommittee had available a wealth of national and state literature on the executive and legislative. Of primary importance were the series of five studies of executive reorganization conducted in Montana.

The comparisons of articles of the Montana constitution with similar articles in the constitutions of Alaska, Hawaii, Michigan, New Jersey, Puerto Rico, and the Model State Constitution of the National Municipal League prepared by the Constitution Subcommittee of the 1967-68 Montana Legislative Council were extremely valuable to the subcommittee.

All constitutional executive and legislative offices, boards, and commissions were contacted for their suggestions regarding revision of the state executive and legislature.

The Commission on Executive Reorganization was contacted to establish coordination between the commissions. Coordination of the following items are of particular importance:

I. The Executive Reorganization Study.

II. The Constitution Revision Study as it applies to the executive department.

III. The twenty-department amendment (1969 Laws of Montana Ex-Chap. 1).

IV. The amendment providing for additional amendments for the reorganization of the executive department. (1969 Laws of Montana, Chap. 66)

V. The referendum on calling a constitutional convention and the possibility of a convention in late 1971 or early 1972.

The following points were raised in a letter to the Executive Reorganization Commission:

1. Will your studies and recommendations include changes in the constitutional structure and powers of the executive department, i.e., elected and appointed officers, departments, elections, qualifications, terms of office, succession, compensation, military authority of

governor, appointment power, budget power, executive reorganization power, etc.?

II. Do you read the proposed constitutional amendment (1969 Laws of Montana Ex-Chap. 1) to require not more than twenty departments including--or in addition to--the present constitutional departments, boards, and agencies?

Will your recommendations include the constitutional departments, boards, and agencies? These constitutional departmentd, boards, and agencies include:

1. State Board of Equalization (Article XII, section 15)
2. Department of Labor and Industry (Article XVIII, section 1)
3. Department of Agriculture (Article XVIII, section 1)
4. State Examiner (Article VII, section 8)
5. State Board of Education (Article XI, section 11)
6. State Board of Pardons (Article VII, section 9)
7. State Board of Examiners (Article VII, section 20)
8. State Board of Prison Commissioners (Article VII, section 20)
9. State Depository Board (Article XII, section 14)
10. State Board of Land Commissioners (Article XI, section 4)

III. Will your recommendations include the constitutional officers that are excluded from the twenty-department amendment?

1. Governor (Article VII, section 1)
2. Lieutenant-Governor (Article VII, section 1)
3. Secretary of State (Article VII, section 1)
4. Attorney General (Article VII, section 1)
5. State Treasurer (Article VII, section 1)
6. State Auditor (Article VII, section 1)
7. Superintendent of Public Instruction (Article VII, section 1)

IV. Do you intend to make recommendations or prepare draft constitutional amendments for comprehensive reorganization of the executive provisions of the Constitution that could be submitted to the electorate in 1972, 1974, and 1976 under the proposed amendment to allow additional amendments for the reorganization of the executive department?

George L. Bousliman replied that the Executive Reorganization Commission had decided ". . .that questions of constitutional change should be left to the Commission on Constitution Revision and that all possible efforts should be made to harmonize the two studies. The Commission added this proviso, however: it wishes to reserve the right to propose constitutional amendments should this become necessary."

He replied to the five questions:

> I. It is not contemplated that our study will include recommendations for change in the constitutional structure and powers of executive agencies. We won't know for certain, however, until such time as the Commission has had an opportunity to review certain research materials prepared by the staff.
>
> II. We understand the twenty-agency amendment to mean that the executive branch of state government shall consist of twenty agencies, excluding the seven constitutional officers enumerated. It is our understanding that other constitutional boards and departments (such as the Department of Labor & Industry) would have to be a part of the twenty-agency structure. In answer to the second portion of this question, our Commission will undoubtedly make certain recommendations concerning some of the constitutional boards and departments. Recommendations for change, however, may be restricted to proposals that can be accomplished by statute.
>
> III. Our study will include a review of the powers and duties of the seven constitutional officers.
>
> IV. The Commission may wish to recommend the submission of proposed constitutional amendments in 1972, 1974 and 1976.

The executive article will be submitted to the Executive Reorganization Commission for their consideration. Every effort will be made to coordinate recommendations.

The recommendations and a discussion of our recommendations are set forth in the proposed draft sections anc comments.

It is sufficient to say our intention was to meet the objectives suggested by the Legislative Council:

> Virtually all (legislative articles) contain provisions relating to five majc topics including legislators, composition of the body and sessions, procedures, legislative powers, and restrictions on legislative powers. Ideally, the legislative article should accomplish several objectives in a minimum of length. First, it should establish the lawmaking branch of government and provide for the selection of its members. Second, it should describe the major powers the major powers to be exercised by the legislative branch and, where deemed necessary and desirable, prescribe the manner in which these powers may be exercised. (Montana Legislative Council, Report No. 25, The Montana Constitution, October 1968)
>
> Legislatures which are restricted can and often do find ways to avoid constitutional restraints but this encourages subterfuge and adds unnecessarily to expense in time and money. Furthermore, hindering provisions impede those legislatures which are trying to do their work effectively and responsibly, and they diminish the stature of the legislature in the eyes of the public. Reforms must be directed toward making the legislature a decision-making body with power commensurate with responsibility. (Salient Issues of Constitutional Revision, p. 79)

The Council of State Government has summarized the broad objective sought in our proposed executive article.

> In our democratic society an executive branch should be be organized with two main objectives: First, it should perform with maximum effectiveness and efficiency the tasks laid upon it. Second, it should be politically responsible, in practice as well as in theory.
>
> Neither of these objectives can be obtained if the executive branch consists of a sprawling mass of uncoordinated agencies. The Executive should be reorganized so that it can function as a unit. The way to get unity is to establish a clear administrative hierarchy headed by a popularly elected chief executive--in this case a governor--upon whom the attention of the people can focus and from whom all administrative authority will flow. By making the governor responsible for administration and giving him authority commensurate with his responsibility, the twin goals of administrative effectiveness and political responsibility can be achieved. (Quoted in Ferrel Heady, State Constitutions: The Structure of Administration (New York: National Municipal League, 1961), p. 4.)

Respectfully submitted,

HARRY B. MITCHELL
JIM MOORE
RICHARD B. ROEDER
JOHN LYON

REPORT OF THE JUDICIAL SUBCOMMITTEE
TO THE MONTANA CONSTITUTION REVISION COMMISSION
NOVEMBER 20, 1969

GENERAL COMMENTS

The Judicial Subcommittee convened in two sessions--October 3 at the State Capitol in Helena, and October 31 in Butte. The substance of the subcommittee's proposals are contained in the proposed draft sections, prepared by the subcommittee, and the comments, based on committee discussion, prepared by Dale Harris, administrative assistant to the Commission. These are set forth in the Comparison of Present Constitutional Provisions with Proposed Constitutional Provisions.

The Judicial Subcommittee considers the Judicial Article as its major responsibility. Article III, The Declaration of Rights, is basically adequate, and we recommend only minor revisions. Article I, Boundaries, and Article II, Military Reservations, are of minor importance; both are surplusage that can be deleted with no consequence. Most sections in Article XV, Corporations Other Than Municipal, are statutory and should be deleted in any revision. Those sections that are retained can be transferred to other appropriate locations in the Constitution, permitting deletion of a separate corporations article. Article XX, Schedule, will need to be rewritten to provide for a smooth transition from the present constitution to a new one, if one is proposed and adopted. We believe that Article XIII of the Model Constitution affords proper guides for drafting a transitional article.

THE MONTANA JUDICIAL SYSTEM

The Montana Legislative Council Report No. 25, The Montana Constitution, summarized the structure of the present Montana judicial system:

> The Montana Constitution provides for a three-level court system consisting of the Supreme Court, district courts (18 districts have been established having 28 district judges), and justice of the peace and police courts. The Supreme Court has appellate jurisdiction of cases decided in the district courts and limited original jurisdiction consisting of power to issue certain extraordinary writs and exercise general supervision over the inferior courts. District courts comprise the second level of the hierarchy. These are courts of general trial jurisdiction with appellate jurisdiction in cases arising from justice and police courts. The appellate jurisdiction, however, is not limited to a review of the records from lower courts. Appeals to the district courts can result in the cases being tried anew. At the bottom of the hierarchy are justice of the peace and police courts. The jurisdiction of justice courts is limited to cases where the amount in controversy does not exceed $300, and it does not extend to cases of divorce or annulment, quieting title to property and cases in equity. Criminal jurisdiction is limited to offenses which do not constitute a felony as provided by law. Police courts have exclusive

jurisdiction in proceedings for violation of municipal ordinances and also have concurrent jurisdiction with justice of the peace courts for specified offenses not of the grade of felony committed in the county where the police court is located.

Emilie Loring, Research Associate at the University of Montana, summarized amendments related to the judiciary in Montana Public Affairs Report, No. 2 (Bureau of Government Research, University of Montana, Missoula: February, 1968):

APPROVED JUDICIAL CHANGES

In 1900 an amendment was ratified which affected the supreme court in two ways: the legislature could increase supreme court membership from three to five justices and district court judges could be called to sit in place of supreme court justices disqualified or unable to serve. A similar amendment had been ratified in 1898, but declared invalid by the supreme court for procedural deficiencies in its submission. In 1919 the legislature exercised its discretion to increase membership of the supreme court to five justices.

The constitution originally prohibited increase or reduction of judicial salaries during an elective term of service. In 1964 the voters approved an amendment which removed the prohibition against increase in judicial salary during an elective term, while retaining the historic prohibition against reduction of salary.

Neither of these two amendments provoked the controversy which has arisen over other proposals for constitutional changes in the judiciary.

DEFEAT OF INFERIOR COURT CHANGES

For some time there has been discussion of the inadequacies of the Montana court structure; the proposal in the accompanying article is the most recent of a number of suggestions for improvement. In order for the legislature to make any significant change in the judicial structure, however, the constitutional status of the inferior courts must be changed or eliminated.

A comprehensive judicial amendment was introduced in the House of Representatives in 1945 but failed to get out of committee. In 1951 and again in 1957 attempts were made in the lower house to give the legislature the power to create and abolish inferior courts; both again were killed in committee. [After a study of the justice courts in 1960, the Legislative Council recommended deletion of constitutional references to these courts.] In 1961, however, the proposal to eliminate the constitutional

status of justices of the peace, police and municipal courts was introduced in the Senate and passed by both houses. Removing all references to these inferior courts in the constitution would have left their reestablishment, or the organization of some substitute, to the legislature. However, the electorate, at the general election of 1962, refused to approve the amendment.

The same proposal was made the following year, 1963, when it passed the Senate but was defeated in the House. In the 1967 session of the legislature still another attempt was made, again originating in the Senate, but the proposal died in committee.

The constitution originally provided two-year terms for county officials. Throughout the twentieth century there have been repeated attempts to lengthen these terms, including those of the justices of the peace. Gradually the electorate approved increased terms for other county officers but twice refused, in 1942 and 1944, to provide four year terms for the justices of the peace.

They are nominated at party primaries and elected on a partisan ballot at the general election. There are no educational or experience qualifications, merely citizenship and residence requirements.

PROPOSED CHANGES IN SELECTION OF JUSTICES

Another aspect of the judicial system which has received legislative attention has been the method of nomination and selection of justices; this might require constitutional change but one significant change has been made by statute. In 1935 the earlier partisan nomination and election of supreme court justices and district court judges was legislatively changed to a non-partisan election. Vacancies are filled by gubernatorial appointment, the appointee to serve until the next election.

In 1945 a comprehensive amendment was first introduced to establish a judicial commission to nominate judges, the governor to appoint, and including provision for recall by the electors. The proposal, originating in the House, failed to survive the committee stage in that body. Similar amendments were defeated on a roll call vote in the House in 1957, killed by House committee in 1959, passed by the House in 1963 but indefinitely postponed by the Senate. The latest proposal was made in the Senate during the 1967 session of the legislature. This bill provided that the governor would appoint district and supreme court justices from nominations made by a judicial commission. The judges would then run against their record (not an opposing

candidate) at periodic intervals. That is, the voters could approve or reject an incumbent, appointed judge at a general election. The proposal was one of numerous bills neglected in the press of business the final day of the session.

RECENT REFORM PROPOSALS

The Citizens' Conference on the Montana Judicial System met in Great Falls in 1966 and adopted a consensus statement which said, "the type and quality of justice presently being provided in these courts could be materially improved by adoption of a uniform court system which would provide a district court level of judicial quality for all legal proceedings." [The Consensus of the Citizens' Conference on the Montana Judicial System, Great Falls, Montana, September 29-30, October 1, 1966.]

David R. Mason and William F. Crowley, Professors of Law, University of Montana, published a study of the Montana judicial system in 1967 [Mason, David R. and Crowley, William F., "Montana's Judicial System--A Blueprint for Modernization, Montana Law Review, V. 29 (Fall, 1967), pp. 1-41]. The article described the present judicial system--both its structure and operation--and made specific criticisms of the present system and proposals for modernization to achieve a two-level court system.

The 1968 Legislative Council Report No. 25, The Montana Constitution, recommended deletion of references to justices of the peace and police courts from the constitution and recommended that the legislature be given the authority to establish inferior courts and provide for their organization. The Legislative Council further concluded:

> . . .Constitutional references to the Clerk of the Supreme Court, County Clerks of Court, and County Attorneys should be deleted. Removal of the constitutional references to these offices would allow the legislature discretion in providing for necessary officials and introduce desirable flexibility in organization. For example, appointment of some officers on a district basis could be provided. Without making specific recommendations, the Council also concludes that an improved method of removing judges from office would also be desirable.

Senate Bill 302, introduced into the 1969 Legislative Assembly, was based upon the Mason-Crowley proposal and the suggestion of the Citizens' Conference on the Montana Judicial System.

In April, 1969, the Executive Committee of the Montana Bar Association appointed a Judicial Reform Committee to draft an amendment and revise the Judicial Article and work with the Montana Constitution Revision Commission. Professor David Mason was appointed chairman. Other members of the Judicial Reform Committee are:

Jack L. Green	Richard J. Andriolo	Lester Loble II
Sid Stewart	John C. Sheehy	Lloyd Skedd
Nat Allen	Dick Dzivi	Ronald Colgrove
Sherman Lohn	R. D. Corette, Jr.	William F. Crowley

The Judicial Reform Committee used SB 302 as a starting point for the work of the committee. In a series of meetings, the committee resolved most objections that had been raised by the district judges' association during the 1969 Legislative Assembly.

SUBCOMMITTEE PROCEDURE

The Judicial Reform Committee provided subcommittee members their proposed amendment, asked for comment, and invited subcommittee members to attend a meeting of the Judicial Reform Committee in Missoula on October 17. Kendrick Smith represented the subcommittee at the meeting.

The Judicial Subcommittee invited Professor Mason to attend the October 3, 1969 meeting of the subcommittee in Butte. Professor Mason reviewed in detail the final draft of the amendment which had been adopted by his committee. A copy of the Judicial Reform Committee draft is attached to the proposed Judicial Article, along with a table that indicates changes made by our subcommittee in their proposal. The subcommittee carefully considered the draft amendment prepared by the Judicial Reform Committee, then made the following report to the Judicial Reform Committee:

1. The subcommittee approved the Judicial Reform Committee draft amendment with the minor changes indicated in the attached table.

2. The subcommittee rearranged the proposed sections and combined some sections. This was accomplished without changing sentence structure, except for sentence structure in section 2 of the Judicial Reform Committee draft. This section was separated into sections 2 and 4 in the Judicial Subcommittee draft (section 2 covers the appellate jurisdiction of the supreme court and section 4 covers the general supervisory and administrative powers of the supreme court). The Judicial Subcommittee draft of the judicial article is attached.

3. Although the Judicial Reform Committee draft did not amend section 19 of the present constitution, the Judicial Subcommittee recommended section 19 be deleted.

4. Minor changes in capitalization were made for consistency.

5. The Judicial Subcommittee did not prepare its recommendations on the judiciary article in bill form, as their recommendations will be part of a report on the entire constitution.

6. The subcommittee recommendations must be approved by the entire Commission before they become the recommendations of the Montana Constitution Revision Commission; further modifications might be made by the Commission.

On November 21, Professor Mason reported to the Executive Committee of the Montana Bar Association on the activities of the Judicial Reform Committee. The Executive Committee voted to continue the Judicial Reform Committee. It also voted: 1) to approve the actions taken by, and the draft amendment of, the Judicial Reform Committee; and 2) to authorize the Judicial Reform Committee, in its discretion, to approve the draft amendment of the Judicial Subcommittee of the Constitutional Revision Commission. Professor Mason has asked that the Commission consider both draft amendments. The Judicial Reform Committee will then act on the amendment proposed by the Commission. The draft amendment prepared by both committees closely coincide.

The subcommittee wishes to thank the Judicial Reform Committee of the Montana Bar Association for the work they have done on the judicial article and to thank Professor David Mason for his assistance. Having a draft revision of the judicial article greatly simplified the task of the Judicial Subcommittee of the Montana Constitution Revision Commission. The Judicial Subcommittee hopes the new arrangement of sections and the minor changes in the draft article prepared by the Judicial Reform Committee are approved by the Commission and by the Judicial Reform Committee.

The Executive Committee of the Citizens' Conference on the Montana Judicial System will meet December 13, 1969 to review the recommendations of the Judicial Reform Committee and the Montana Constitution Revision Commission.

ASSESSMENT OF MONTANA JUDICIAL SYSTEM

"There are two current difficulties facing the district courts.

"(1) The great disparity in the case loads handled by individual judges.

"(2) The lack of an established administrative system which would permit quick adjustments to meet temporary or permanent difficulties created by overloaded dockets in individual areas or by the illness of incapacity of a judge.

"The shortcomings of the justice courts and the police courts are equally serious.

"(1) A multitude of courts and judges. There are 185 justices of the peace in Montana. When police judges are added, 230 people are involved in dispensing justice at this court level alone.

"(2) Lack of training and skill. The overwhelming majority of justices of the peace and police judges have no legal training and do

not have the knowledge to decide many of the problems presented. The county attorneys have more legal knowledge and training than the judges in these courts, and the law enforcement officers frequently know more about the law in their particular field. This places the judge at a tremendous disadvantage.

"(3) Lack of courtrooms and facilities. Most justices of the peace and many police judges have no courtrooms and hold court in kitchens, offices, grain elevators, garages and other places of business. Proceedings are often carried out hurriedly between household tasks or business engagements in surroundings not conducive to judicial proceedings.

"(4) The fee basis of compensation. The great majority of justices of the peace are paid a fee for each case they handle. Since a law enforcement officer generally has a choice between at least two justices of the peace in any case, he may choose the judge to whom he takes the matter and who, therefore, receives the fee. Thus the officer can control the judge's income and can assert powerful pressure on the court to make the decision he wants. This power is widely resented by justices of the peace, but they have no way to combat it.

"(5) Incompleteness of civil jurisdiction. Justices of the peace have legal jurisdiction over cases involving smaller sums (up to $300) but the reports indicate that few such cases are ever handled. This appears to be due to the intricacy of the court procedures, the necessity for hiring legal counsel at an expense which is prohibitive, and lack of faith by prospective litigants in the capacity of these courts. People needing legal redress in this kind of case have no forum in which they can receive speedy and effective justice. A whole area of justice is left unserved." [David R. Mason and William F. Crowley, "A Proposal to Modernize Montana's Judicial System," Montana Public Affairs Report, No. 2 (Bureau of Government Research, University of Montana, Missoula: February, 1968).]

SUGGESTIONS FOR CONSTITUTIONAL CHANGE

Basic changes which would be accomplished by the adoption of the proposed Judicial Article are:

(1) the establishment of a two-level court system as opposed to the three-level system;
(2) elimination of justices of the peace, police and municipal courts;
(3) transfer to the district courts jurisdiction over all matters presently handled by inferior courts;
(4) providing for the appointment of magistrates by the district judges who shall be assigned such matters as prescribed by law;
(5) permitting the expansion of the number of Supreme Court Justices to seven;
(6) providing for a system of administration within the court system with well defined lines of administrative control;
(7) vesting the legislature with authority to provide for the election

of other method of selection of justices and judges;

(8) permitting the legislature to provide for censure, suspension, removal, or retirement of justices and judges in addition to present methods of impeachment;

(9) allowing for the appointment, rather than the election, of the Clerk of the Supreme Court and of clerks of the district court;

(10) deletion of provision for election of county attorney so that legislature may provide for district attorneys.

"In order to achieve an efficient two-level judicial system and provide a district court level of justice in every legal proceeding, a constitutional amendment is necessary.

"The legislature would be able to provide methods of selection other than election for members of the judiciary, thus removing any constitutional road block to the legislature adopting, if it sees fit, the so-called Missouri Plan, or some variant thereof, for judicial selection. [The subcommittee does not believe the details of such a plan should be placed in the constitution, although the constitution should permit the legislature to adopt a merit system of selection, and not require election of judges.]

"The proposed amendment would abolish both justices of the peace and police courts and place their jurisdictions in the district court. . . . The district Chief Judges, with the approval of the Chief Justice of the Supreme Court, could appoint [magistrates] who must have been admitted to practice law before the Montana Supreme Court. The [magistrates] would exercise district court functions in criminal cases not amounting to felony and act as a committing and examining court in felony cases. This provision for the appointment of [magistrates] is entirely new and is intended to provide flexibility in those situations where difficulties may be created by the absorption of lower court jurisdiction into the district court.

"One of the principal problems at present is that of prompt justice for minor criminal offenders, especially traffic and fish and game violators in rural or remote areas of the state. The [magistrate] system would permit the appointment of part-time or full-time judicial officers to handle this part of the criminal case load in the courts. [Magistrates] could be appointed to exercise jurisdiction in individual cases, in particular classes of cases, or in a particular territory. Some of these appointments might be of a permanent nature and substantially conform to the duties now exercised by justices of the peace and police judges. [Magistrates] would, however, be members of the bar exercising district court judicial functions and would be responsible to the [judge] of the district and to the Chief Justice of the Supreme Court; they would be an integral part of the state judicial system." [David R. Mason and William F. Crowley, "A Proposal to Modernize Montana's Judicial System," Montana Public Affairs Report, No. 2 (Bureau of Government Research, University of Montana, Missoula: February, 1968).]

"For years there have been criticisms of the inferior court system of Montana, especially the Justice of the Peace system. Nearly ten years ago a study of a sub-committee of the Legislative Council strikingly called attention to its deficiencies and weaknesses. These deficiencies and weaknesses relate to facilities, personal qualifications of the judge, and the organization itself. The system is neither efficient nor economical.

"We have a small army of part-time, mostly untrained judges, functioning principally as traffic courts.

"Small civil actions are largely ignored under our system. This is not surprising, because lawyers can't afford to handle such claims, laymen are not capable of adequately handling such cases, and the jurisdiction of our District Courts does not extend to claims under $50.00. What is needed for an effective small claims court is an experienced judge, thoroughly conversant with the substantive law and able to handle adverse parties without the aid of attorneys. Montana simply does not afford such a tribunal for the man with a small claim.

"The fact of the matter is that about 95% of the functions of Justices of the Peace and Police Judges are administrative, involving principally the collection of fines and the forfeiture of bonds.

"The Legislative Council, in its report of 1968 to the Legislative Assembly, recommends that reference to these inferior courts be deleted from the Constitution and that discretion be vested in the Legislature to establish courts below the District Court level.

"It is [our] opinion that any revision of the Judicial Article should go further than this. In 1961, our Legislature proposed a Constitutional Amendment of this nature but it failed to gain the approval of the electorate. This may have been due, in part, to the lack of organized vigorous support for it, but [we] think it was also due, in part, to the fact that no proposal was presented for anything in lieu of the existing system.

"In [our] opinion, any proposal for revision of the Judicial Article should contain provisions regarding the nature of the system to be substituted for the present system. [We] do not think it enough merely to leave it to the Legislature to establish courts below the District Court level.

"In fact [we] submit that there should be no court below the District Court level. A two-level trial court system results in increased expenses for facilities and staff, which may be avoided by having one level of trail courts. Also, the judges on the lower level almost surely would be paid lower salaries than those on the upper level, and such courts woudl be inferior in fact as well as name.

"[We] submit that the jurisdictions of the Justices of the Peace and the Police Courts should be placed in our District Courts. This can be done, in spite of the vastness of this state and the diversity in the volume of business in different areas of the state. . . .Magistrates. . .who would

be lawyers, but not necessarily residents of the district, might be appointed under the supervision of the Supreme Court by the District Court. Only if the [judges of the] District Court certified that no lawyer was available could a layman be appointed as [magistrate]. Magistrates] should be permitted to exercise jurisdiction in misdemeanor cases and act as committing magistrates in felony cases. Such [magistrates] might also be given some civil jurisdiction. They would not have to be appointed for any particular term or paid a specific annual salary, but could be appointed to handle specific cases, as occasion might require, and should be compensated according to the work done. They would be within the jurisdiction of and under the control of the District Courts.

"Administrative functions of Justices of the Peace and Police Judges, which is the great bulk of their work, might be handled by Clerks of Court, or Deputy Clerks of Court; and, if need exists, Deputy Clerks could be appointed at places other than county seats.

"[We are] convinced that this flexible system is feasible, and it confirms to a trend in other states toward a two-level court system--on one level an appellate court, on the other level a trial court. This proposal would permit everyone to have the benefit of justice dispensed by courts on the level of our District Courts. Certainly, the man charged with a minor offense or who has a small civil claim is just as entitled to properly administered justice as the man charged with a major offense, or who has a large civil claim." [Statement of David R. Mason to the Montana Constitutional Revision Commission July 11, 1969.]

We invite your attention to proposed Section 8. Our subcommittee was unable to agree that the compensation of the magistrate should be fixed by the appointing judge; two members were of the opinion that the compensation should be within the limits provided by law.

Respectfully submitted,

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REPORT OF THE TAXATION AND FINANCE SUBCOMMITTEE
OF THE MONTANA CONSTITUTION REVISION COMMISSION
NOVEMBER 20, 1969

GENERAL COMMENTS

The Taxation and Finance Subcommittee convened in three sessions--October 3 and 4, 1969, at the State Capitol in Helena, and October 22, 1969, at the office of the Montana Constitution Revision Commission at the University of Montana in Missoula. The substance of the subcommittee's proposals is contained in the proposed draft sections, prepared by the subcommittee, and the comments, based on committee discussion, prepared by Dale Harris, administrative assistant to the Commission. These are set forth in the Comparison of Present Constitutional Provisions with Proposed Constitutional Provisions.

FINANCIAL PROVISIONS

Few, if any, provisions of the Montana constitution are more complex than those governing state and local finance. There are three articles devoted to finance [Article XII, Revenue and Taxation; Article XIII, Public Indebtedness; Article XXI, Montana Trust and Legacy Fund; and sections in most other articles regulate finance, especially the legislative article. As the Legislative Council noted, the complexity of the financial provisions is illustrated by extensive court cases interpreting the language. Without a very careful review of these court cases, the provisions are not readily understandable. In general, the financial provisions of the constitution are statutory.

State constitutions do not grant taxation and finance powers to the states, for by reason of their constitutional position in the federal system, they already possess all of the powers not delegated to the national government. The power to tax is an inherent power of the state vested absolutely in the legislature and hence is exercisable even in the absence of specific authorization in the Montana constitution. Except as limited by the State and Federal Constitutions and the laws of the United States, the power to tax is bounded only by the necessity of the State. There are several significant limitations imposed upon the State's taxation power by the Federal Constitution; the Fourteenth Amendment prohibits a state from discriminatorily subjecting persons and property to taxes not imposed on other of the same class; the "commerce clause" limits the power of states to tax certain activities and businesses involving interstate or foreign commerce; and the principle that a sovereign cannot be taxed without its consent shields the property and activities of the Federal Government from state taxation unless Congress has provided to the contrary.

Financial limitations are the principal limitations in the constitution on the ability of the governor, legislature, and local government to provide efficient, economical and necessary public services financed adequately by an equitable tax structure. These constitutional restrictions bear most heavily upon the fiscal powers of the legislature--to tax, to appropriate, to incur and finance debt and to establish the administrative structure necessary to implement these powers.

Since financial provisions are not necessary to grant taxation and financial powers to the state, since those powers reside in the state by virtue of its sovereignty, the financial provisions restrict those fiscal powers. The salient characteristic of the finance provisions of the constitution is that they restrict the state, in varying ways, from exercising the state's fiscal powers to the limits permitted by the federal constitution. The restrictions, which so hamper imagination and flexibility in developing fiscal programs have created obstacles to sound fiscal planning, management, and organization.

The Legislative Council noted what should be contained in a constitutional article on finance:

> In its simplest form, the problem of what to include in the article on taxqtion and finance is a test of one's belief in our system of representative democracy. It is difficult to reconcile a position demanding a series of constitutional prohibitions or limitations upon the legislature's exercise of discretion in respect to taxation and finance with a real belief in democracy. Those who argue for constitutional checks are admitting a lack of belief in the capacity or desire of the elected representatives of the voters to establish and maintain an adequate and equitable system of financing public expenditures. [Edward M. Kresky, "Taxation and Finance," Salient Issues of Constitutional Revision, (New York: National Municipal League, 1961), pp. 136-137.]

The capacity of the state to administer its affairs is hampered by the constitutional limits on types of taxes, maximum tax rates, authority to incur state and local debt, borrowing discretion; constitutional requirement for popular referendum to approve taxes and debt, the earmarking of special funds, and constitutional administrative procedures for administration of state funds and constitutional legislative procedures for consideration of money bills. The subcommittee's recommendations concerning each of these limitations are contained in the proposed draft sections and comments.

"Ideally, a constitution should be silent on the subject of taxation and finance, thus permitting the legislature and the governor freedom to develop fiscal policies for the state to meet the requirement of their time." [Edward M. Kresky, "Taxation and Finance," Salient Issues of Constitutional Revision, (New York: National Municipal League, 1961), pp. 136.] Obviously, such a recommendation would not be accepted, but that does not mean that the existing maze of constitutional language should remain as a barrier to responsible state government. The subcommittee has sought to clarify the present provisions on finance and to vest discretion in the Legislative Assembly over state finance and remove restrictions presently imposed on the state legislature's power over state finance. At the same time, the subcommittee has retained safeguards to check possible excesses of executive and legislative authority in fiscal affairs.

The origins of complex fiscal restrictions are traceable to the state abuses in the field of finance during the first half of the 19th century and to the subsequent demands of taxpayers for protection against a variety of sins ranging from imprudent fiscal practices to gross financial mismanagement and fraud. These restrictions have not served well and it is time to remove them from the Montana constitution, at least those that unnecessarily prevent sound fiscal planning, management and organization.

The subcommittee notes that the recommendations of other committees bear directly on state and local finances. The elimination of the following financial officers, boards, and commissions from the constitution per the recommendations of the Legislative and Executive Subcommittee will allow the legislature to provide for a coordinated administration of state finances: state treasurer, state auditor, state board of land commissioners, board of examiners, depository board, state board of equalization, state examiner. The provision for an executive budget and item veto over appropriations strengthens the governor's fiscal powers. The deletion of procedural details for money bills, and fiscal procedures frees the legislature to provide for sound fiscal legislation and fiscal management. The annual session recommendation will allow annual rather than biennial budgets. The taxpaying qualification for voting on the creation of a levy, debt, or liability has an important effect on the ability of the state and especially local government to finance needed services. The subcommittee notes the new provision in the Judicial Article to finance the proposed judicial system and its provision for apportioning certain of the costs between units of local government and the state. The subcommittee also notes the importance of fiscal powers and state financial aid to the strengthening of local government proposed by the Local Government Subcommittee.

SUBCOMMITTEE RECOMMENDATIONS

The subcommittee's recommendations are tentative, subject to revision. In several instances, the subcommittee has not made its recommendations yet. The subcommittee intends to consult with members and staff of the interim committee on fiscal affairs, the board of equalization, the state treasurer's office, state auditor, state board of land commissioners, board of examiners, depository board, state examiner, state controller, state budget director, legislative auditor, and fiscal analyst. The subcommittee is also interested in consulting with the Legislative Council subcommittees on income taxation and property taxation.

In conclusion, the subcommittee notes these words from the 1955 report of the President's Commission on Intergovernmental Relations (Kestnbaum Commission):

> Some of the fiscal problems facing state and local governments today stem from the failure of the states to remove constitutional and statutory limitations that circumscribe their freedom of action. It is often because of these limitations that state and local government turn to the national government

for assistance. The states have restricted themselves in the use of taxing and borrowing powers, and they have earmarked revenues for specific purposes in ways that deprive legislatures and executives of budgetary control and fiscal flexibility. [A Report to the President for Transmittal to the Congress (Washington, D.C., the Commission, 1955), p. 98.]

Respectfully submitted,

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REPORT OF THE LOCAL GOVERNMENT SUBCOMMITTEE
TO THE MONTANA CONSTITUTION REVISION COMMISSION
NOVEMBER 20, 1969, AS AMENDED JANUARY 1970

GENERAL COMMENTS

The Local Government Subcommittee has convened in three sessions--October 3 and 4 at the State Capitol in Helena, and November 11 at the office of the Montana Constitution Revision Commission at the University of Montana in Missoula. The first two sessions were devoted to subcommittee discussion of the ways in which the present Montana Constitution impairs effective local government. Subjects of review were Article XVI of the Montana Constitution, Counties--Municipal Corporations and Offices, and recommendations on Article XVI prepared by the Legislative Council in 1968. At the conclusion of the review and subsequent discussion, the subcommittee reached agreement that the most desirable course of revision would be to excise Article XVI from the Montana Constitution and to substitute a new article on local government in its place.

During October and early November, attention was directed to judicial decisions concerning local government in Montana, published studies of Montana local government, constitutional provisions for local government recently adopted or proposed in other states, and the growing body of literature devoted to the need to unshackle and strengthen local government throughout the nation in order that local government can develop capabilities to meet present and future responsibilities and for the general health of the federal system. Of particular use to the subcommittee have been recent general studies of American local government and the reports of the Advisory Commission on Intergovernmental Relations, the National Municipal League, and the Council of State Governments.

During its third sessions, the Local Government Subcommittee heard the comments of Professor Larry M. Elison of the School of Law, University of Montana, and Mr. Dan Mizner, Executive Secretary of the Montana League of Cities and Towns. Brief statements were made to the subcommittee by Mr. Lyle Balderson, newly appointed director of the Community Development Division of the State Department of Planning and Economic Development; Mrs. Ludvig Browman, member and secretary of the newly formed Interlocal Cooperation Commission of Missoula County; Mrs. Henry Bugbee, Legislative Chairman of the Montana League of Women Voters, and Miss Lucile Speer, former Documents Librarian at the University of Montana and chairman of the Montana League of Women Voters study of the Montana Constitution and its needs for revision.

Transcripts or summaries of these comments and statements are available to the Commission. The subcommittee turned to formulation of its report to the Commission at the conclusion of the November 11 meeting.

ASSESSMENT OF THE PROVISIONS FOR LOCAL GOVERNMENT IN THE PRESENT MONTANA CONSTITUTION

The Local Government Subcommittee accepts as inevitable that framers of a constitution drafted in 1889 would have difficulty in providing for the needs of Montana local governments in 1969. The Montana Constitution of 1889 encompassed sixteen counties. There were an estimated 140,000 people in Montana, and the territory's urban areas held only one-fourth of the total population. Expectation and provision of local governmental services were still rudimentary.

Although there are references to counties, cities, and towns scattered throughout the Montana Constitution, and provisions for local indebtedness are treated separately, local government is dealt with chiefly in Article XVI, entitled Counties--Municipal Corporations and Offices.

As adopted in 1889, Article XVI reflected a preoccupation with county government. There was clear expectation that additional counties would be formed; certain procedures for establishment of counties were set forth, and the power of the legislature to regulate county establishment was explicitly stated. The only limitation on the legislature's power to deal with counties incorporated in Article XVI was the provision that county seats could not be removed except by general law and that no county seat could be removed without approval of electors in the county.

The traditional framework of Montana county government is set forth in Sections 4 and 5 of Article XVI. With amendments added in 1902, 1928, 1934, and 1938, the sections provide for the election of county commissioners for overlapping terms from commissioner districts, and for election of the following officers: county clerk and recorder, sheriff, treasurer, superintendent of schools, surveyor, assessor, coroner, and public administrator. Provision is made for filling vacancies in any of these positions, and there is also authorization (added by amendment in 1934) for county commissioners to consolidate any two or more of the other constitutional county offices.

In 1936 Montana voters approved an amendment to Article XVI, presently Section 8, which provides that no county in existence in January, 1935 (by then, the present 56 counties had been established), or any subsequently established, could be abandoned, abolished, and/or consolidated either in whole or

in part with any other county or counties except by majority vote in the county concerned. The amendment restricted the legislature's power (expressly stated in 1889) to change counties or readjust county lines by law.

The only mention of municipal government in the original sections of the 1889 Montana Constitution was sparse in Section 6, which authorized the legislative assembly to provide for the election or appointment of such other county, township, precinct and municipal officers as public convenience might require. Their terms of office were to be prescribed by law, but these terms were not to exceed two years, unless otherwise provided in the Constitution.

Important to an understanding of this apparent slighting of municipalities by the framers of the 1889 Constitution is that there was little question then or since that in American constitutional law, the state exercises plenary power over municipalities. In 1872 John F. Dillon, a justice of the Supreme Court of Iowa, had provided a basic description of the plenary power. In an Iowa decision he held:

> Municipal corporations owe their origin to, and derive their powers and rights wholly from, the legislature. It breathes into them the breath of life, without which they cannot exist. As it creates, so it may destroy. If it may destroy, it may abridge and control. Unless there is some constitutional limitation on the right, the legislature might, by a single act, if we can suppose it capable of so great a folly and so great a wrong, sweep from existence all of the municipal corporations in the State, and the corporation could not prevent it. We know of no limitation on this right so far as the corporations themselves are concerned. They are, so to phrase it, the mere tenants at will of the legislature.

Justice Dillon's thesis was repeated by the courts in many cases and the same reasoning was expressed by the United States Supreme Court some years later. In 1872 Justice Dillon summarized the body of judicial constructions of the powers of local government, and his analysis, "Dillon's Rule," remains controlling to this day. It states:

> It is a general and undisputed proposition of law that a municipal corporation possesses and can exercise the following powers, and no others: First, those granted in express words; second, those necessarily or fairly implied or incident to the accomplishment of the declared objects and purposes of the corporation,--not simply convenient, but indispensable.

In his commentary on the Montana Constitutional Convention of 1889, John W. Smurr notes that the treatment of the local government article represented one of the few instances in which the convention made substantial deletions of detail proposed by committee. For instance, one section proposed for Article XVI would have made specific reference to municipal government, stipulating that the Legislative Assembly should provide by general laws for the organization and classification of cities and towns, that these classes should not exceed four, and that all municipal corporations of the same class should possess the same powers and be subject to the same restrictions. However, delegates stressed that in local affairs, the legislature had a perfect right to do everything that the article on local government incorporated, and could be counted on to write into statutes those things the delegates wished to strike from the committee report.

Events bore out the promise. By statute, Montana provided for three optional forms of municipal government between 1889 and 1917--mayor-council, commission, and commission-manager. Statutes also have provided for classification of municipalities into four classes based on population and classification of counties into seven classes based on taxable valuation, laying the basis for treating each municipality and county in a given class by general law applicable to the class.

The most significant change in the relationship of the legislature to local government in Montana was brought about by constitutional amendment in 1922, when voters approved an amendment stipulating that the legislature possessed broad discretion in fashioning optional forms of government, not only for cities and towns, but also for counties, and for any of these units in consolidated arrangements, subject only to voter approval in the territory or territories affected. Additionally, these legislative provisions for optional forms of local government could be either by general or special law. The terms of the amendment, Section 7 of Article XVI are:

> The legislative assembly may, by general or special law, provide any plan, kind, manner or form of municipal government for counties, or counties and cities and towns, or cities and towns, and whenever deemed necessary or advisable, may abolish city or town government and unite, consolidate or merge cities and towns and county under one municipal government, and any limitations in this constitution notwithstanding, may designate the name, fix and prescribe the number, designation, terms, qualifications, method of appointment, election or removal of the officers thereof, define their duties and fix penalties

> for the violation thereof, and fix and define boundaries of the territory so governed, and may provide for the discontinuance of such form of government when deemed advisable; provided, however, that no form of government permitted in this section shall be adopted or discontinued until after it is submitted to the qualified electors in the territory affected and by them approved.

The chief results to date of the addition of Section 7 to the local government article in the Montana Constitution have been legislative enactment of a detailed system of city-county consolidated government in 1923 and authorization of an optional form of county manager government in 1931. The city-county consolidated form of government was tailored to Silver Bow County's situation, but failed twice in formal voting on its adoption in that county. Montana's least populated county--Petroleum, with a current census of 800--adopted county manager government in 1942, and under its terms, elects three county commissioners who appoint a county manager to oversee departments of finance, public works and public welfare.

Article V of the Montana Constitution, devoted to the legislative branch, includes certain restrictions on the legislature's power to act in local affairs. The most significant restrictions are incorporated in Section 26, which enumerates certain kinds of local or special laws which the legislature is prohibited from enacting; in each instance, the enumerated case would involve interference in the internal affairs of a specific locality.

Except for providing localities with the implicit right to choose optional forms of government set forth in general law, the Montana Constitution is silent on any general grants of power to local government. Its silence has been matched by legislative disinclination to make such grants. Meantime, against a background of a mounting body of national precedent, the Montana Supreme Court consistently has held that cities and towns are creatures of the legislature and have only those powers which the legislature confers by express legislative declaration or necessary implication, and that counties are not municipal corporations and hence have no legislative or police powers, but are merely administrative units of government which must in every instance justify action by reference to the provisions of law defining and limiting their powers.

Amendments relating to local government have been proposed with regularity since 1889, with only limited success in gaining legislative approval initially and voter approval finally. Most numerous have been attempts to alter limits

of local indebtedness and the length of terms of office for county and municipal officers. Generally, any change in county or municipal government structure by amendment has come after repeated attempts in successive legislatures. There have been three attempts, each unsuccessful, in 1939, 1957, and 1961, to gain legislative approval of proposed amendments to grant municipalities the right to frame their own charters for internal governmental structure. More recently, there have been unsuccessful amendments proposed in the legislature to clarify county powers to enforce zoning and other regulations not in conflict with the general laws of the state.

As noted, only minimal experimentation with new forms of local government has resulted from the addition of Section 7 to Article XVI of the Montana Constitution. For the most part, the structure of local government has remained static, adhering to traditional forms. Meantime, in Montana, as in the rest of the nation, there have been significant changes in population size and distribution, with corresponding changes in governmental needs in both rural and urban areas.

By 1900, there were 24 counties in Montana and by 1914, this number had increased to 39, with new counties emerging chiefly in the eastern and northern parts of the state as those areas attracted dry-land farmers. Good years for crops, need for local services, and desires for legislative representation contributed to another burst of new counties between 1914 and 1920, when the number stood at 54. By 1924 Montana's present total of 56 counties had been established. Today, 36 of these counties have populations of less than 10,000.

Presently, there are 125 incorporated municipalities in Montana, divided into first class (10,000 inhabitants or more); second class (5,000 to 10,000 inhabitants); third class (1,000 to 5,000 inhabitants) and towns (300 to 1,000 inhabitants). By 1960, Montana was classed as an urban state with more than half of its population living in twenty-six incorporated places and four suburban clusters having more than 2,500 population. Montana's rural to urban population shift has continued through the 1960's, with forty-one counties losing population in the present decade, and the most populous counties continuing to register significant population gains. A 1967 survey showed 59 percent of Montana's population living in areas with municipal government and the remaining 41 percent, or 275,700 Montanans, living outside of areas with municipal government.

In addition to the special improvement districts that both municipalities and counties are authorized to administer, there were in 1967 an additional 209 special districts in Montana, authorized by state law. By classification they

included two county water districts, 23 drainage districts, six housing authorities, 52 irrigation districts, 58 public cemetery districts, six public hospital districts, 61 soil and water conservation districts, and a single television district.

No single local government problem is dominant in Montana. Counties with small population (and today there are thirty-six counties with populations of less than 10,000) continue to maintain the traditional apparatus of county government; only Petroleum County of Montana's fifty-six counties has opted for the simplified county manager organization. Heavily urbanized counties evidence urban-suburban complexes with special problems of service and tax inequities. Most town and city budgets are strained to perform the tasks reasonably expected of municipal government. Many unincorporated clusters of population function without basic community services. The county, as agent of the state, historically equipped to furnish rural services, now encompasses both city and suburb. In Montana, as elsewhere, special service or improvement districts are stop-gap devices, increasing the units of local government, piling up tax districts, and creating additional conflicts of interest. Although the legislature has granted localities certain flexible approaches in coping with problems of finance and services, there is all-too evident an ingrained hesitation for localities to be innovative in solving local problems. Additionally, freedoms in the choice of optional internal structures of government or the devising of cooperative arrangements to provide local government services on an areawide basis are all too often accompanied by hampering fiscal limitations.

These in brief are the problems posed for local government in Montana today. They create an urgency for change in constitutional provisions and legislative procedures if local governments in Montana are to be able to freely use a variety of arrangements and devices and depend on adequate power and resources to meet current and future local needs.

GENERAL CONCLUSIONS

The subcommittee concludes that in providing for units of local government, the Montana Constitution should:

(1) Continue the present authorization to the legislature to provide optional forms of government for counties, cities, and towns or for any of these units of local government in a consolidated organization.

(2) Omit constitutional detail on the structure and procedures of county government, reserving these matters for statutory provisions.

(3) Grant as much freedom of action as possible in local affairs so that units of local government can use their own power and initiative in meeting future responsibilities.

(4) Free the legislature of acting on a host of local bills without impairing its power to act in matters of statewide and regional concern and to facilitate the ability of local governments to respond to changing conditions and changing local needs.

(5) Permit and encourage intergovernmental cooperation in meeting problems that can best be handled by the coordinated activity of units of local government, acting in combination with one another or with agencies of the state.

COMMENTS

In the Subcommittee's view, the principal matters that should be treated in a revised article on local government are: the organization of local government, the allocation of powers between the state and its localities, and intergovernmental relations.

Section 7 of the Montana Constitution, added by amendment in 1922, is a broad grant of power to the legislature to devise optional plans of government for cities, towns, and counties, or for any of these units in consolidated arrangements, by general or special law, subject to voter approval in the area affected. The Subcommittee regards this constitutional framework for the organization of local government as adequate, flexible for future needs, and susceptible to expanded use.

Adoption of the 1922 amendment superseded the detail on county government incorporated in Article XVI. Since 1922, the legislature has had authority to devise optional forms of county government, but the constitutional detail has remained, exerting a powerful force upon county government. The Subcommittee agrees with the recommendations of the Legislative Council in its 1968 study of the Montana Constitution that details of county government structure are properly statutory matters and not issues of fundamental constitutional law.

The Subcommittee acknowledges that one of the most difficult tasks is the allocation of powers between state and local governments. The problem has been described as "whether a constitutional provision can be formulated which will give local communities greater freedom to exercise initiative in dealing with local affairs, thus obviating or reducing the need for specially enacted state legislation, without restricting the power of the state to deal with matters of genuine statewide or regional concern."

In the nation at large, the traditional approach to granting localities substantial freedom in local affairs has been constitutional or legislative authorization to localities to adopt and amend their own charters of government, and to enact local legislation, usually limited by consitutional enumeration, while the power to enact laws of statewide concern has been retained by the legislature. Two basic difficulties have arisen: American national, state and local governments have become increasingly independent, and most governmental problems are matters of shared responsibility, rather than the exclusive concern of either the state or of its local governments. A society in constant change demands governments responsive to change, and often efforts to fix allocations of power within constitutional context create problems as change and new demands on government occur. Additionally, the allocated method of granting power to local government has fostered quantities of litigation; courts have had to make the difficult decisions of what in fact are local affairs, and generally have found that few issues can be so designated.

Recently, another approach to the constitutional powers for provision of local government has been gaining adhorents. Its thrust is to grant full legislative authority to units of local government subject to control by the state legislature through enactments which restrict local legislative action or which deny power to act in certain areas. Under the concept, local governments would require the legislature to survey existent statutory law relating to local government and to distinguish those matters that are properly the state's responsibilities. Most observers consider that the state at least must be free to devise a coordinated tax structure for both local and state government and to establish general rules for the incorporation, alteration of boundaries, merger, consolidation or dissolution of local governments. At the same time, local governments should be unfettered by detailed regulations of the procedures by which they provide local services.

Increasingly in the United States, various forms of interlocal agreements are being used to solve local governmental problems that transcent the boundaries of individual units of government. These devices are providing useful in both urban and rural areas, and have a practicality about them that more drastic schemes of areawide government lack. In urban areas, cities, towns and counties are pooling resources in mutual activities or employing contractual arrangements by which the local government best equipped to provide a specific service makes it available to other units. Interlocal cooperation in rural areas is a potential solution to provision of areawide services by two or more counties. In Montana the Legislative Assembly has authorized several specific kinds of interlocal cooperation by statute, and in

1967, adopted a broadly permissive interlocal cooperation act by which the state authorizes and encourages local units of government and state agencies to pool their resources for common projects or to contract jointly for the performance of a service. The Subcommittee on Local Government concludes that there would be advantages in a constitutional authorization of interlocal cooperation, to cut through current uncertainties and to underscore state policy in encouraging this approach to state and local governmental activities.

METHOD OF IMPLEMENTING CHANGES

Since implementation of the subcommittee's recommendations would necessitate several fundamental revisions in provisions of the Montana Constitution relating to local government, there is strong sentiment within the Local Government Subcommittee that these revisions could not be satisfactorily accomplished by piecemeal amendment and that the best method of constitutional change would be through the means of a constitutional convention.

Respectfully submitted,

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JAMES W. MURRY
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COMPARISON OF PRESENT MONTANA CONSTITUTION WITH PROPOSED CONSTITUTION

REVISION OF PREAMBLE

COMPARISON OF PRESENT PREAMBLE WITH PROPOSED PREAMBLE

Proposed Constitution	Present Constitution
Article I PREAMBLE	PREAMBLE
We, the people of Montana, grateful to Almighty God for the blessings of liberty, in order to secure the advantages of state government, do ordain and establish this constitution. or We, the people of Montana, grateful to Almighty God for our freedom, to secure its blessings and promote our common welfare, do establish this constitution.	We, the people of Montana, grateful to Almighty God for the blessings of liberty, in order to secure the advantages of a state government, do, in accordance with the provisions of the enabling act of congress, approved the twenty-second of February, A.D. 1889, ordain and establish this constitution.

Comment: The present preamble refers to the Enabling Act, which provided for the people of North Dakota, South Dakota, Montana, and Washington to form constitutions and state governments and to be admitted into the Union, on an equal footing with the original states. This reference is unnecessary. The first alternative merely deletes reference to the Enabling Act. The stated objective is to secure the advantages of state government. The second alternative, which is the preamble to the Idaho constitution, states the objective of establishing the constitution is to secure the blessings of liberty and to promote the common welfare.

REVISION OF BILL OF RIGHTS ARTICLE
[Article II in Proposed Constitution; Article III in Present Constitution]

COMPARISON OF PRESENT ARTICLE III WITH PROPOSED ARTICLE II
AND RECOMMENDATIONS OF LEGISLATIVE COUNCIL

Present Article	Legis. Council Recommendation	Subcommittee Recommendation	Location in Proposed Article
III, Sec. 1	adequate	retain	Section 1
2	adequate, unnec.	retain	2
3	adequate	retain	3
4	revise	revise	4
5	adequate	retain	5
6	adequate	retain, unnec.	6
7	revise	retain	7
8	revise	revise	8
9	adequate	retain, unnec.	9
10	adequate	retain	10
11	adequate	retain	11
12	adequate	delete	--
13	adequate	retain	13
14	adequate	retain	14
15	adequate	retain	15
16	adequate	retain	16
17	adequate	retain, unnec.	17
18	adequate	retain	18
19	revise	retain	19
20	adequate	retain	20
21	adequate	retain	21
22	adequate	retain	22
23	revise	revise	23
24	adequate, little force	retain, unnec.	24
25	repeal	delete	--
26	adequate	retain	26
27	adequate	retain	27
28	repeal	delete	--
29	repeal	retain	25
30	adequate	retain	12
31	adequate	retain	28

Proposed Constitution	Present Constitution
Article II DECLARATION OF RIGHTS	Article III A DECLARATION OF THE RIGHTS OF THE PEOPLE OF THE STATE OF MONTANA
Section 1. All political power is vested in and derived from the people; all government of right originates with the people; is founded upon their will only, and is instituted solely for the good of the whole.	No change from Article III, Section 1.
Section 2. The people of the state have the sole and exclusive right of governing themselves, as a free, sovereign, and independent state, and to alter and abolish their constitution and form of government, whenever they may deem it necessary to their safety and happiness, provided such change be not repugnant to the constitution of the United States.	No change from Article III, Section 2.
Section 3. All persons are born equally free, and have certain natural, essential, and inalienable rights, among which may be reckoned the right of enjoying and defending their lives and liberties, of acquiring, possessing, and protecting property, and of seeking and obtaining their safety and happiness in all lawful ways.	No change from Article III, Section 3.
Section 4. No law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof.	The free exercise and enjoyment of religious profession and worship, without discrimination, shall forever hereafter be guaranteed, and no person shall be denied any civil or political right or privilege on account of his opinions concerning religion, but the liberty of conscience hereby secured shall not be construed to dispense with oaths or affirmations, excuse acts of licentiousness, by bigamous or polygamous marriage, or otherwise, or justify practices inconsistent with the good order, peace, or safety of the state, or opposed to the civil authority thereof, or of the

United States. No person shall be required to attend any place of worship or support any ministry, religious sect, or denomination, against his consent; nor shall any preference be given by law to any religious denomination or mode of worship.
[Article III, Section 4]

Comment: The Legislative Council recommended that the present detailed section be replaced with a more adequate statement similar to the federal provision or the Alaska provision. The subcommittee recommends the present provision be replaced with the provision from the Alaska constitution, [Article I, Section 4].

Section 5. All elections shall be free and open, and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.

No change from Article III, Section 5.

Section 6. Courts of justice shall be open to every person, and a speedy remedy afforded for every injury of person, property, or character; and that right and justice shall be administered without sale, denial, or delay.

No change from Article III, Section 6.

Comment: The subcommittee notes that none of the six constitutions used for comparative purposes by the Legislative Council has similar provisions and that this right may be insured by "due process" and "equal protection" rights. The Council concluded that the section was adequate. The subcommittee notes that it is probably unnecessary.

Section 7. The people shall be secure in their persons, papers, homes, and effects, from unreasonable searches and seizures, and no warrant to search any place or seize any person or thing shall issue without describing the place to be searched, or the person or thing to be seized, nor without probable cause, supported by oath or affirmation, reduced to writing.

No change from Article III, Section 7.

Comment: The subcommittee notes the Legislative Council comment: "All six constitutions used for comparative purposes have similar provisions; one expressly prohibits wire-tapping. The Council believes that law enforcement officers should have permission to use reasonable methods to

compile evidence if these methods are employed in a manner which provides protection for individual rights. The Council concludes that this section would be more adequate if it specifically recognized the right to use modern surveillance methods as authorized by a court. The section could read: 'The people shall be secure in their persons, papers, homes, and effects, from unreasonable searches and seizures, and no warrant to search any place, utilize electronic or other means to intercept oral or other communications, or seize any person or thing shall issue without describing the place to be searched, or the person or thing to be seized, nor without the probable cause, supported by oath or affirmation, reduced to writing.'"

The subcommittee recommends that the present section be retained, noting the following statement in a letter from the attorney general on file in the Commission office:

"Specifically you have asked the following questions:

"1. Would the suggested revision prevent testimony from a person who was employed by a law enforcement agency as an undercover agent?

"2. Would the addition of the language suggested hamper law enforcement agencies in gathering evidence?

"The answer to your first question depends on how broadly the term 'utilize. . .other means to intercept oral or other communications,' is construed. The construction to be placed upon this term ultimately can be made only by the Montana Supreme Court. I have attempted to find cases from other states which have construed language similar to this and have found none. Therefore I am unable to state whether such language would be construed so as to prevent the use of undercover agents. The United States Supreme Court in the recent case of Katz v. United States, 36 LW 4080, did away with the physical 'trespass' doctrine previously enunciated in Olmstead v. United States, 277 U.S. 438, 464-466. The Katz case held that the government's activities in electronically listening to and recording the petitioner's words violated the privacy upon which he relied while using a telephone booth and thus constituted a 'search and seizure' within the meaning of the Fourth Amendment to the Constitution of the United States. In view of this decision it would appear that in the future any sort of electronic surveillance will have to be done pursuant to court authorization if it is not to run afoul of the Fourth Amendment.

"The answer to your second question depends in part on how broadly the term 'utilize. . .other means to intercept oral or other communications,' is construed. As previously pointed out the Supreme Court of the United States has said, in effect, that evidence gathered by electronic surveillance will be admissible only if obtained after court authorization; therefore, the addition of such language to the Montana Constitution will not alter the existing law of the land. If this language is construed so as to include evidence obtained by undercover agents then it could hamper Montana law enforcement to the extent that they rely on evidence gathered by such agents."

Section 8. Criminal offenses, not amounting to felony shall be prosecuted by complaint. Felony cases shall be prosecuted by information, after examination and commitment as provided by law, or after leave granted by the court, or shall be prosecuted by indictment without such examination or commitment, or without such leave of the court. A grant jury shall consist of seven persons, of whom five must concur to find an indictment. A grand jury shall only be drawn and summoned when the district judge shall, in his discretion, consider it necessary, and shall so order.	Criminal offenses of which justice's courts and municipal and other courts, inferior to the district courts, have jurisdiction, shall, in all courts inferior to the district court, be prosecuted by information, after examination and commitment by a magistrate, or after leave granted by the court, or shall be prosecuted by indictment without such examination or commitment, or without such leave of the court. A grand jury shall consist of seven persons, of whom five must concur to find an indictment. A grand jury shall only be drawn and summoned when the district judge shall, in his discretion, consider it necessary, and shall so order. [Article III, Section 8]

Comment: This section has been revised to delete reference to courts inferior to district courts. This amendment is identical with one proposed by the Judicial Reform Committee.

Section 9. Treason against the state shall consist only in levying war against it, or in adhering to its enemies, giving them aid and comfort; no person shall be convicted of treason except on the testimony of two witnesses to the same overt act, or on his confession in open court; no person shall be attainted of treason or felony by the legislative assembly; no conviction shall work corruption of blood or forfeiture of estate; the estates of persons who may destroy their own lives shall descend or vest as in cases of natural death.	No change from Article III, Section 9.

Comment: Present Section 9 paraphrases the section on treason in the federal constitution. The subcommittee feels that this section is unnecessary, but does not recommend deletion.

Section 10. No law shall be passed impairing the freedom of speech; every person shall be free to speak, write, or publish whatever he will on any subject, being responsible for all abuse of that liberty; and that in all	No change from Article III, Section 10.

suits and prosecutions for libel, the truth thereof may be given in evidence; and the jury, under the direction of the court, shall determine the law and the facts.

Section 11. No ex post facto law nor law impairing the obligation of contracts, or making any irrevocable grant of special privileges, franchises, or immunities, shall be passed by the legislative assembly.

No change from Article III, Section 11.

Section 12. The enumeration in this constitution of certain rights shall not be construed to deny, impair, or disparage others retained by the people.

No change from Article III, Section 30.

Comment: The subcommittee recommended deletion of present Section 12. Present Section 30 is a substitute for present Section 12 in the proposed new arrangement of sections in the Bill of Rights.

Section 13. The right of any person to keep or bear arms in defense of his own home, person, and property, or in aid of the civil power when thereto legally summoned, shall not be called in question, but nothing herein contained shall be held to permit the carrying of concealed weapons.

No change from Article III, Section 13.

Section 14. Private property shall not be taken or damaged for public use without just compensation having been first made to or paid into court for the owner.

No change from Article III, Section 14.

Section 15. The use of all water not appropriated for sale, rental, distribution, or other beneficial use, and the right of way over the lands of others, for all ditches, drains, flumes, canals, and aqueducts, necessarily used in connection therewith, as well as the sites for reservoirs necessary for collecting and storing the same, shall be held to be a public use. Private roads

No change from Article III, Section 15.

may be opened in the manner to be prescribed by law, but in every case, the necessity of the road, and the amount of all damage to be sustained by the opening thereof, shall be first determined by a jury, and such amount, together with the expenses of the proceeding, shall be paid by the person to be benefited.

Section 16. In all criminal prosecutions the accused shall have the right to appear and defend in person and by counsel; to demand the nature and cause of the accusation; to meet the witnesses against him face to face; to have process to compel the attendance of witnesses in his behalf, and a speedy public trial by an impartial jury of the county or district in which the offense is alleged to have been committed, subject to the right of the state to have a change of venue for any of the causes for which the defendant may obtain the same.

No change from Article III, Section 16.

Section 17 No person shall be imprisoned for the purpose of securing his testimony in any criminal proceeding longer than may be necessary in order to take his deposition. If he can give security for his appearance at the time of the trial, he shall be discharged upon giving the same; if he cannot give security, his deposition shall be taken in the manner prescribed by law, and in the presence of the accused and his counsel, or without their presence, if they shall fail to attend the examination after reasonable notice of the time and place thereof. Any deposition authorized by this section may be received as evidence on the trial, if the witness shall be dead or absent from the state.

No change from Article III, Section 17.

Comment: The subcommittee notes the comment of the Legislative Council: "None of the six constitutions used for comparative purposes have similar provisions. The wording of this section caused considerable debate during the 1889 constitutional convention. Proponents of the section cited

cases where the accused was released on bail, but the innocent witness was held in jail because the prosecutor wished to insure his attendance at the trial. Authority to receive depositions from witnesses absent from the state may have been negated, in part, by the United States Supreme Court in Pointer v. Texas, 380 U.S. 400. The Council concludes that this section is adequate." The subcommittee believes this section is unnecessary, but does not recommend deletion.

Section 18. No person shall be compelled to testify against himself, in a criminal proceeding, nor shall any person be twice put in jeopardy for the same offense.	No change from Article III, Section 18.
Section 19. All persons shall be bailable by sufficient sureties, except for capital offenses, when the proof is evident or the presumption great.	No change from Article III, Section 19.
Section 20. Excessive bail shall not be required, or excessive fines imposed, or cruel and unusual punishments inflicted.	No change from Article III, Section 20.
Section 21. The privilege of the writ of habeas corpus shall never be suspended, unless, in case of rebellion, or invasion, the public safety require it.	No change from Article III, Section 21.
Section 22. The military shall always be in strict subordination to the civil power; no soldier shall in time of peace be quartered in any house without the consent of the owner, nor in time of war, except in the manner prescribed by law.	No change from Article III, Section 22.
Section 23. The right of trial by jury shall be secured to all, and remain inviolate, but in all civil cases and in all criminal cases not amounting to felony, upon default of appearance, or by consent of the parties expressed in such manner as the law may prescribe, a trial by jury may be waived, or a trial	The right of trial by jury shall be secured to all, and remain inviolate, but in all civil cases and in all criminal cases not amounting to felony, upon default of appearance, or by consent of the parties expressed in such manner as the lay may prescribe, a trial by jury may be waived, or a trial had by any

had by any less number of jurors than the number provided by law. In civil cases where the sum claimed or the value of that which is claimed by the plaintiff, not including interest and costs, does not exceed two thousand dollars, and in criminal cases not amounting to felony, a jury shall consist of not more than six persons. In all civil actions and in all criminal cases not amounting to a felony, two-thirds in number of the jury may render a verdict, and such verdict so rendered shall have the same force and effect as if all such jury concurred therein.

less number of jurors than the number provided by law. A jury in a justice's court, both in civil cases and in cases of criminal misdemeanor, shall consist of not more than six persons. In all civil actions and in all criminal cases not amounting to felony, two-thirds in number of the jury may render a verdict, and such verdict so rendered shall have the same force and effect as if all such jury concurred therein. [Article III, Section 23]

Comment: This section is revised to delete reference to justice courts. This revision is identical with the one proposed by the Judicial Reform Committee.

Section 24. Laws for the punishment of crime shall be founded on the principles of reformation and prevention, but this shall not affect the power of the legislative assembly to provide for punishing offenses by death.

No change from Article III, Section 24.

Comment: The subcommittee notes the Legislative Council comment that this section may have little if any force. The subcommittee feels that the section is unnecessary, but does not recommend deletion.

Section 25. The provisions of this constitution are mandatory and prohibitory, unless by express words they are declared to be otherwise.

No change from Article III, Section 29.

Comment: The subcommittee recommends deletion of present Section 25. Present Section 29 is substituted for present Section 25 in the proposed new arrangement of sections in the Bill of Rights.

Section 26. The people shall have the right peaceable to assembly for the common good, and to apply to those invested with the powers of government for redress of grievances by petition or remonstrance.

No change from Article III, Section 26.

Section 27. No person shall be deprived of life, liberty, or property without due process of law.

No change from Article III, Section 27.

Section 28. No armed person or persons or armed body of men shall be brought into this state for the preservation of the peace, or the suppression of domestic violence, except upon the application of the legislative assembly, or of the governor when the legislative assembly cannot be convened.

No change from Article III, Section 31.

Comment: The subcommittee recommends deletion of present Section 25. Present Section 31 is substituted for present Section 28 in the proposed new arrangement of sections in the Bill of Rights.

Sections Deleted

No person shall be imprisoned for debt except in the manner prescribed by law, upon refusal to deliver up his estate for the benefit of his creditors, or in cases of tort, where there is strong presumption of fraud. [Article III, Section 12]

Comment: The subcommittee recommends that this section be deleted as unnecessary.

Aliens and denizens shall have the same right as citizens to acquire, purchase, enjoy, convey, transmit, and inherit mines and mining property, and milling, reduction, concentrating, and other works, and real property necessary for or connected with the business of mining and treating ores and minerals: provided, that nothing herein contained shall be construed to infringe upon the authority of the United States to provide for the sale or disposition of its mineral and other public lands. [Article III, Section 25]

Comment: The subcommittee agrees with the Legislative Council that this section is obsolete and should be deleted.

There shall never be in this state either slavery or involuntary servitude, except as punishment for crime, whereof

the party shall have been duly convicted. [Article III, Section 28]

Comment: This right is guaranteed by the thirteenth amendment to the United States Constitution. The subcommittee agrees with the Legislative Council conclusion that this section is unnecessary and should be deleted.

REVISION OF SUFFRAGE ARTICLE
[Article III in Proposed Constitution; Article IX in Present Constitution]

COMPARISON OF PRESENT ARTICLE IX WITH PROPOSED ARTICLE III
AND RECOMMENDATIONS OF LEGISLATIVE COUNCIL

Present Article	Legis. Council Recommendation	Subcommittee Recommendation	Location in Proposed Article
IX, Sec. 1	adequate	delete	---
2	revise	revise	Section 1
3	adequate	delete	---
4	adequate	delete	---
5	adequate	delete	---
6	revise	delete	---
7	adequate	delete	---
8	repeal	delete	---
9	adequate	revise	Section 2
10	repeal	delete	---
11	repeal	delete	---
12	repeal	delete	---
13	adequate	delete	---

Proposed Constitution

Article III
SUFFRAGE AND ELECTIONS

Section 1. (1) Except as provided in subsections (2) and (3) of this section, a person is qualified to vote for all officers and on all questions if he:

(a) has attained the age of twenty-one years;

(b) is a citizen of the United States;

(c) has resided in this state for six (6) months and in the county, municipality or precinct the time fixed by law immediately preceding the election at which he offers to vote.

(d) For purposes of voting in the election for President and Vice-President of the United States only, the legislature may by law establish lesser resident requirements for citizens who have resided in this state for less than six months.

(2) To vote on a creation of a levy, debt, or liability, a person must have the qualifications specified by subsection (1) of this section and must also be a taxpayer listed on the last complete assessment roll.

(3) A person convicted of a felony is not entitled to vote unless he is pardoned by the governor.

Present Constitution

Article IX
RIGHTS OF SUFFRAGE AND
QUALIFICATIONS TO HOLD OFFICE

Every person of the age of twenty-one years or over, possessing the following qualifications, shall be entitled to vote at all general elections and for all officers that now are, or hereafter may be, elective by the people, and, except as hereinafter provided, upon all questions which may be submitted to the vote of the people or electors: First, he shall be a citizen of the United States; second, he shall have resided in this state one year immediately preceding the election at which he offers to vote, and in the town, county or precinct such time as may be prescribed by law. If the question submitted concerns the creation of any levy, debt or liability the person, in addition to possessing the qualifications above mentioned, must also be a taxpayer whose name appears upon the last preceding completed assessment roll, in order to entitle him to vote upon such question. Provided, first, that no person convicted of felony shall have the right to vote unless he has been pardoned or restored to citizenship by the governor: Provided, second, that nothing herein contained shall be construed to deprive any person of the right to vote who has such right at the time of adoption of this constitution; provided, that after the expiration of five years from the time of the adoption of this constitution, no person except citizens of the United States shall have the right to vote. [Article IX, Section 2]

Comment: This section is a revision of present Section 2. The residency requirement is lowered from one year to six months; a provision to allow new state residents to vote for presidents is provided; and obsolete language is deleted.

A presidential Commission of Registration and Voting Participation created in 1963 compiled a list of twenty-one standards for voting requirement. The Commission recommended that:

1. state residence requirements should not excees six months;
2. local residence requirements should not exceed thirty days; and
3. new state residents should be allowed to vote for president.

The Legislative Council concluded that state residence requirements should be set at six months and local residence requirements should be fixed by statute rather than by constitutional provision and recommended draft language for a revision of present Section 2.

The subcommittee concurs with the Legislative Council recommendation, but adds subsection (1)(d) to give the legislature authority to establish by law lesser resident requirements for voting in the election for President and Vice-President of the United States for citizens who have resided in the state for less than six months.

The subcommittee notes the amendment to the present Section 2, Article IX, proposed by the 1969 Legislative Assembly, that will lower the voting age to nineteen (19) if approved by the electorate at the 1970 general election.

Twelve state constitutions, including Montana, require property tax or other taxpaying provisions as qualifications for voting in elections: Arizona, California, Colorado, Idaho, Kansas, Montana, Nevada, New York, Oregon, Pennsylvania, Virginia, and Washington. These qualifications are generally applicable only to elections on local bond issues, tax levying or bond and tax levying issues for school districts. The Montana provision was added by amendment in 1932:

> If the question submitted concerns the creation of any levy, debt, or liability the person, in addition to possessing the qualifications above mentioned, must also be a taxpayer whose name appears upon the last preceding completed assessment roll, in order to entitle him to vote upon such question.

Proponents of property taxpaying qualifications contend:

1. Because local tax revenues are derived chiefly from real property taxation, property owners should have the sole right to decide upon questions of local fiscal policy that are submitted to the electorate.

2. Since non-propertied residents would not have to meet the costs of the decisions made, permitting them to participate in the elections may invite fiscal irresponsibility.

Opponents of property taxpaying qualifications argue:

1. Non-propertied residents do indirectly bear the burden of taxation because landlords pass their operating costs, including taxes, on to their tenants in the form of rent.

2. Property qualifications create distinctions which are fundamentally at odds with democratic principles.

The continued validity of the property qualification under the federal constitution may not long survive under the broad pronouncement of the United States Supreme Court in a case concerning the poll tax. There the court said:

> We conclude that a State violates the Equal Protection Clause of the Fourteenth Amendment whenever it makes the affluence of the voter or payment of any fee an electoral standard. Voter qualifications have no relation to wealth nor to paying or not paying this or any other tax [Harper v. State Board of Elections, 383 U.S. 663 (1966)].

Property qualifications for voting in revenue bond elections have already been declared unconstitutional in a recent Louisiana decision by the Supreme Court. The Montana attorney general has advised units of local government in Montana of this decision and its effect on revenue bond elections and implications for general obligation bond elections.

Section 2. The legislature shall enact laws to preserve the purity of elections, to preserve the secrecy of the ballot, and to guard against abuses of the elective franchise.

The legislative assembly shall have the power to pass a registration and such other laws as may be necessary to secure the purity of elections and guard against abuses of the elective franchise. [Article IX, Section 9]

Comment: This is a revision of present Section 9 and is intended to replace deleted Sections 1, 3, 4, 5, 6, 7, 8, 10, 11, 12, and 13, which the subcommittee felt were statutory in nature. The following wording from the Hawaii constitution could be substituted:

> The legislature shall defind residence for voting purposes, provide for the registration of voters and for absentee voting, and shall prescribe the method of voting at all elections. Secrecy of voting shall be preserved.

Deleted Sections

All elections by the people shall be by ballot.
[Article IX, Section 1]

For the purpose of voting no person shall be deemed to have gained or lost a residence by reason of his presence or absence while employed in the service of the state, or of the United States, nor while engaged in the navigation of the waters of the state, or of the United States, nor while a student at any institution of learning, nor while kept at any almshouse or other

asylum at the public expense, nor while confined in any public prison.
[Article IX, Section 3]

Electors shall in all cases, except treason, felony or breach of peace, be privileged from arrest during their attendance at elections and in going to and returning therefrom.
[Article IX, Section 4]

No elector shall be obliged to perform military duty on the days of election, except in time of war or public danger.
[Article IX, Section 5]

No soldier, seaman or marine in the army or navy of the United States shall be deemed a resident of this state in consequence of being stationed at any military or naval place within the same.
[Article IX, Section 6]

No person shall be elected or appointed to any office in this state, civil or military, who is not a citizen of the United States, and who shall not have resided in this state at least one year next before his election or appointment.
[Article IX, Section 7]

No idiot or insane person shall be entitled to vote at any election in this state.
[Article IX, Section 8]

All persons possessing the qualifications for suffrage prescribed by Section 2 of this article as amended and such other qualifications as the legislative assembly may by law prescribe, shall be eligible to hold the office of county superintendent of schools or any other school district office.
[Article IX, Section 10]

Any person qualified to vote at general elections and for state officers in this state, shall be eligible to any office therein except as otherwise provided in this constitution, and subject to such additional qualifications as

may be prescribed by the legislative assembly for city offices and offices hereafter created.
[Article IX, Section 11]

Upon all questions submitted to the vote of the taxpayers of the state, or any political division thereof, women who are taxpayers and possessed of the qualifications for the right of suffrage required of men by this constitution, shall equally with men have the right to vote.
[Article IX, Section 12]

In all elections held by the people under this constitution, the person or persons who shall receive the highest number of legal votes shall be declared elected.
[Article IX, Section 13]

Comment: The subcommittee feels these sections are statutory. The Legislative Council recommended repeal of Sections 8, 10, 11, 12, revision of Section 6, and felt that Sections 1, 3, 4, 5, 7, 9, and 13 were adequate. The subcommittee feels these sections are all statutory and are therefore replaced by the proposed Section 2.

COMPARISON OF PRESENT ARTICLE V WITH PROPOSED ARTICLE IV AND RECOMMENDATIONS OF LEGISLATIVE COUNCIL

Present Article	Legis. Council Recommendation	Subcommittee Recommendation	Location in Proposed Article
V, Sec. 1	revise	revise	Section 1
2	adequate	retain	2
3	adequate, arbitrary	retain	3
4	[repealed]	----	--
5	no comment	revise	6
6	adequate, obsolete	revise	7
7	adequate	revise	8
8	repeal	delete	--
9	adeqaute	revise	9
10	adequate	revise	10
11	adequate	revise	11
12	adequate	revise	12
13	adequate	delete	--
14	adequate	revise	13
15	adequate	retain	14
16	adequate	revise	15
17	adequate	revise	15
18	adequate	delete	--
19	adequate	retain	16
20	adequate	retain	17
21	adequate	delete	--
22	revise	delete	--
23	adequate	retain	18
24	adequate	retain	19
25	adequate	delete	--
26	adequate	delete	--
27	repeal	delete	--
28	repeal	delete	--
29	adequate, unnec.?	delete	--
30	repeal	delete	--
31	no comment	delete	--
32	adequate	delete	--
33	adequate	delete	--

Present Article	Legis. Council Recommendation	Subcommittee Recommendation	Location in Proposed Article
V, Sec. 34	adequate	delete	Section --
35	adequate	delete	--
36	adequate	delete	--
37	adequate	delete	--
38	repeal	delete	--
39	adequate, obsolete	delete	--
40	revise	revise	transfer to V, 13
41	repeal	delete	--
42	repeal	delete	--
43	repeal	delete	--
44	repeal	delete	--
45	[repealed]	----	--
46	adequate	revise	20
--	----	revise; from VI, 2 & 3	4
--	----	from XIX, 1	5
--	----	revise; from XV, 3	21
--	----	retain; from XV, 13	22
--	----	retain; from XV, 16	23
--	----	from XIX, 2	24
--	----	from XIX, 5	25

Proposed Constitution

Article IV
THE LEGISLATURE

Section 1. The legislative power of the state is vested in the legislative assembly, consisting of a senate and a house of representatives. The people may propose and enact laws by initiative and approve or reject acts of the legislature by the referendum.

Present Constitution

Article V
LEGISLATIVE DEPARTMENT

The legislative authority of the state shall be vested in a legislative assembly, consisting of a senate and a house of representatives; but the people reserve to themselves power to propose laws, and to enact or reject the same at the polls, except as to laws relating to appropriations of money, and except as to the laws for the submission of constitutional amendments, and except as to local or special laws, as enumerated in article V, section 26, of this constitution, independent of the legislative assembly; and also reserve power, at their own option, to approve or reject at the polls, any act of the legislative assembly, except as to laws necessary for the immediate preservation of the public peace, health, or safety, and except as to laws relating to appropriations of money, and except as to laws for the submission of constitutional amendments, and except as to local or special laws, as enumerated in article v, section 26, or this constitution. The first power reserved by the people is the initiative and eight per cent. of the legal voters of the state shall be required to propose any measure by petition; provided, that two-fifths of the whole number of the counties of the state must each furnish as signers of said petition eight per cent. of the legal voters in such county, and every such petition shall include the full text of the measure so proposed. Initiative petitions shall be filed with the secretary of state, not less than four months before the election at which they are to be voted upon.

The second power is the referendum, and it may be ordered either by petition signed by five per cent. of the legal voters of the state, provided that two-fifths of the whole number of the counties of the state must each furnish as signers

of said petition five per cent. of the legal voters in such county, or, by the legislative assembly as other bills are enacted.

Referendum petitions shall be filed with the secretary of state, not later than six months after the final adjournment of the session of the legislative assembly which passed the bill on which the referendum is demanded. The veto power of the governor shall not extend to measures referred to the people by the legislative assembly or by initiative referendum petitions.

All elections on measures referred to the people of the state shall be had at the biennial regular general election, except when the legislative assembly, by a majority vote, shall order a special election. Any measure referred to the people shall still be in full force and effect unless such petition be signed by fifteen per cent. of the legal voters of a majority of the whole number of the counties of the state, in which case the law shall be inoperative until such time as it shall be passed upon at an election, and the result has been determined and declared as provided by law. The whole number of votes cast for the governor at the regular election last preceding the filing of any petition for the initiative or referendum shall be the basis on which the number of legal petitions and orders for the initiative and for the referendum shall be filed with the secretary of state; and in submitting the same to the people, he, and all other officers, shall be guided by the general laws and the act submitting this amendment, until legislation shall be especially provided therefor. The enacting clause of every law originated by the initiative shall be as follows:

"Be it enacted by the people of Montana."

This section shall not be construed to deprive any member of the legislative assembly of the right to introduce any measure. [Article V, Section 1]

Comment: The first sentence is a slight revision of the first clause of present Section 1. This section is adequate if the state wishes to retain a bicameral legislative assembly. Senator Haughey has introduced amendments in recent legislative sessions to privide for a unicameral legislature (SB 149, 1967; SB 77, 1969).

The provisions of this section on initiative and referendum in the present constitution were added by amendment effective December 7, 1906. The subcommittee regards the principal of initiative and referendum as essential to fundamental law, but regards the implementation of the initiative and referendum as something that can be left to statutory law. The secretary of state directed the Commission's attention to a potential problem arising under the present constitutional initiative and referendum procedures by virtue of the decision of the United States Supreme Court in Moore v. Ogelvie, 89 S. Ct. 1493 (1969). The court held that the equal protection clause was violated by an Illinois petition procedure which required a certain number of qualified voters from each county when applied as a rigid, arbitrary formula to sparsely settled counties and populous counties alike.

The subcommittee suggests the second sentence of proposed Section 1 as a replacement for the detailed, statutory provisions on initiative and referendum in the present constitution. The revised language is from Section 1, Article XI of the Alaska Constitution.

The present provision excepts laws relating to the appropriation of money, laws for the submission of constitutional amendments, and local or special laws from initiative and referendum and excepts laws necessary for the immediate preservation of public peace, health, or safety from referendum.

The use of the initiative for constitutional amendments and initiative for referendums on calling constitutional conventions is discussed in proposed Article XII (Revision and Amendment)

The Legislative Council suggested that this section be substantially revised.

Section 2. Senators shall be elected for the term of four years, and representatives for the term of two years, except as otherwise provided in this constitution

No change from Article V, Section 2.

Comment: The subcommittee agrees with the Legislative Council conclusion that this section is adequate and should be retained.

Section 3. No person shall be a representative who shall not have attained the age of twenty-one years, or a senator who shall not have attained the age of twenty-four years, and who

No change from Article V, Section 3.

shall not be a citizen of the United States, and who shall not (for at least twelve months next preceding his election) have resided within the county or district in which he shall be elected.

Comment: Ths subcommittee agrees with the Legislative Council conclusion that this section is adequate and should be retained.

Section 4. (1) The senate and the house of representatives of the legislative assembly each shall be apportioned on the basis of population.

(2) The legislative assembly following each census made by the authority of the United States, shall revise and adjust the apportionment for representatives and senators on the basis of such census.

(3) At such time as the constitution of the United States is amended or interpreted to permit apportionment of one house of a state legislative assembly on factors other than population, the senate of the legislative assembly shall be apportioned on the basis of one senator for each county.

(4) When a senatorial or representative district shall be composed of two or more counties they shall be contiguous, and the districts as compact as may be.

(1) The senate and the house of representatives of the legislative assembly each shall be apportioned on the basis of population.

(2) The legislative assembly following each census made by the authority of the United States, shall revise and adjust the apportionment for representatives and senators on the basis of such census.

(3) At such time as the constitution of the United States is amended or interpreted to permit apportionment of one house of a state legislative assembly on factors other than population, the senate of the legislative assembly shall be apportioned on the basis of one senator for each county.
[Transfer Article VI, Section 2]

Comment: This section transfers Sections 2 and 3 from present Article VI to the proposed legislative article. These two sections were amended in 1966 to state clearly that representation shall be based on population, remove obsolete language, add the third subsection of Section 2, and add the reference to senatorial districts in Section 3.

The reference to districts composed of contiguous counties from present Section 3, Article VI has been incorporated into present Section 2, Article VI as subsection 4. The subcommittee recommends that this revised section be transferred from the separate article on apportionment and representation and relocated in the legislative article. The separate article on apportionment can then be deleted because the subcommittee recommends the only other section in present Article VI (Section 1) be deleted.

Neither the present nor the proposed legislative article establishes a maximum or minimum size of the legislative assembly. The subcommittee believes that discretion to establish the size of the legislature should

be left to the legislature. The subcommittee notes the recommendation of the Montana Citizens Committee that the size of the Montana Legislative Assembly should be reduced to approximately half the present size of 159 members, but believes such reduction, if desirable, should be statutory and not constitutional.

The present and the proposed apportionment provisions give the responsibility for reapportionment of the house and senate on the basis of each federal census to the legislative assembly. Historically, legislative apportionment in the United States has been a legislative function. The legislature is the agency responsible for apportionment in the large majority of states, but states appear to be giving increasing consideration to vesting apportionment and districting functions in the governor, the chief elections officer, special apportionment boards and commissions, or electronic computers.

The House Committee on Reapportionment is currently conducting a study of reapportionment in Montana and is examining various apportionment methods used in other states. If an alternative to legislative apportionment is desired, most methods could be authorized by legislation under the present and proposed constitutional grant of apportionment authority to the legislative assembly. Contact has been established with the House Committee on Reapportionment to coordinate recommendations.

Section 5. Members of the legislative assembly and all officers, executive, ministerial or judicial, shall, before they enter upon the duties of their respective offices, take and subscribe the following oath or affirmation, to-wit: "I do solemnly swear (or affirm) that I will support, protect and defend the constitution of the United States, and the constitution of the state of Montana, and that I will discharge the duties of my office with fidelity; and that I have not paid, or contributed, or promised to pay or contribute, either directly or indirectly, any money or other valuable thing to procure my nomination or election (or appointment) except for necessary and proper expenses expressly authorized by law; that I have not knowingly violated any election law of this state, or procured it to be done by others in my behalf; that I will not knowingly receive, directly, or indirectly, any money or other valuable thing for the performance or non-performance of any act of duty pertaining to my office

Transfer; no change from present Article XIX, Section 1.

other than the compensation allowed by law, so help me God " And no other oath, declaration or test shall be required as a qualification of any office or trust.

Comment: This section, which is the same as present Section 1, Article XIX, contains the oath required of all legislators and other executive, ministerial and judicial officers. It has been transferred from the present amendment article to the proposed legislative article so that the proposed amendment article will contain only sections relating to revision and amendment of the constitution. Except for the provisions relating to appointment, elections, and compensation, this section is similar to oaths required in other state constitutions The Legislative Council concluded that this section was adequate.

Following are the sections on oaths from the six constitutions reviewed by the Legislative Council:

Alaska: All public officers, before entering upon the duties of their offices, shall take and subscribe to the following oath or affirmation: "I do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution of the state of Alaska, and that I will faithfully discharge my duties as. . .to the best of my ability." The legislature may provide further oaths or affirmations (Section 5, Article XII).

Hawaii: All public officers, before entering upon the duties of their respective offices, shall take and subscribe to the following oath or affirmation: "I do solemnly swear (or affirm) that I will support and defend the Constitution of the United States, and the Constitution of the State of Hawaii, and that I will faithfully discharge my duties as. . .to the best of my ability. The legislature may prescribe further oaths or affirmations (Section 4, Article XIV).

Michigan: All officers, legislative, executive and judicial, before entering upon the duties of their respective offices, shall take and subscribe the following oath or affirmation: I do solemnly swear (or affirm) that I will support the Constitution of the United States and the constitution of this state, and that I will faithfully discharge the duties of the office of. . according to the best of my ability No other oath, affirmation, or any religious test shall be required as a qualification for any office or public trust (Section 1, Article XI).

New Jersey: Every State officer, before entering upon the duties of his office, shall take and subscribe to an oath or affirmation to support the Constitution of this state of the United States and to perform the duties of his office faithfully, impartially and justly to the best of his ability (Section 1 (1), Article VII).

Puerto Rico: All public officials and employees of the Commonwealth, its agencies, instrumentalities and political subdivisions, before entering upon their respective duties, shall take an oath to support the Constitution of the United States and the Constitution and the laws of the Commonwealth of Puerto Rico (Section 16, Article VI).

Model State Constitution: No oath, declaration or political test shall be required for any public office or employment other than the following oath or affirmation: "I do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the constitution of the state of. . . and that I will faithfully discharge the duties of my office of. . .to the best of my ability (Section 1.07, Article 1).

Section 6. The compensation of members of the legislative assembly shall be as provided by law, provided that no legislative assembly shall fix its own compensation.

Each member of the first legislative assembly, as a compensation for his services shall receive six dollars for each day's attendance and twenty cents for each mile necessarily traveled in going to and returning from the seat of government to his residence by the usually traveled route, and shall receive no other compensation, prequisite, or allowance whatsoever.

No session of the legislative assembly, after the first, which may be ninety days, shall exceed sixty days.

After the first session, the compensation of members of the legislative assembly shall be as provided by law; provided, that no legislative assembly shall fix its own compensation
[Article V, Section 5]

Comment: The present Section 5 contains obsolete language referring to the first legislative assembly, a provision for compensation of members of the legislative assembly and a limit on the length of legislative sessions to sixty days.

The revised section retains the provision for compensation of members of the legislative assembly and deletes the other provisions. For discussion of limits on frequency and length of legislative sessions see the comment to Section 7.

Section 7. The legislature shall convene each year on the first Monday of January. It may be convened at other

The legislative assembly (except the first) shall meet at the seat of government at twelve o'clock noon, on the first

times by the governor or at the written request of a majority of the members of each house by presiding officers of both houses.

Monday of January, next succeeding the general election provided by law, and at twelve o'clock noon, on the first Monday of January, of each alternate year thereafter, and at other times when convened by the governor

The term of service of the members thereof shall begin the next day after their election, until otherwise provided by law; provided, that the first legislative assembly shall meet at the seat of government upon the proclamation of the governor after the admission of the state into the Union, upon a day to be named in said proclamation, and which shall not be more than fifteen nor less than ten days after the admission of the state into the Union.
[Article V, Section 6]

Comment: The proposed section provides for annual legislative sessions and no constitutional limit is placed with duration of regular or special legislative sessions.

There has been wide-spread recognition in recent years that the Montana legislature meeting for only two months every two years has insufficient time. Consistently the volume of legislation has required the legislature to extend beyond the present 60-day constitutional limit. Until 1967 the device of stopping the clock on the 60th day was used. In 1967 and 1969 the legislature was forced to adjourn on the 60th day under threat of court injunction and the governor called special sessions to enable the legislature to complete its business.

The proposals for granting the legislature more time are numerous and varied. Recent sessions have seen amendments for an 80-day biennial session; 100-day biennial session; 180-day biennial session; annual with 60-day odd-year session, 45-day even-year budget session; annual with 45-day even-year session; 45-day odd-year session; annual unlimited session.

The Montana Citizens Committee on the State Legislature endorsed annual legislative sessions without time limits for adjournment

The subcommittee recommends a constitutional article that provides annual sessions with no specific time limit. The Legislature is the best judge of the time necessary to complete the legislative business of the state.

The trend has been for state legislatures to meet annually. In 1950 only seven states met annually. By the end of 1968, 30 states have chosen to meet annually, and 20 hold biennial regular sessions.

The second sentence of the proposed section provides for the convening of special sessions by the governor or on the written request of a "majority of the members of each house" by the presiding officers of both houses. This provision is similar to the provision in proposed Section 12, Article V, but differs as to language and number of legislators necessary to request a special session. Proposed Section 12, Article V, requires "two-thirds of the members to which each house is entitled." If the provision is to be repeated in both the executive and legislative articles, the languages should be identical. See Section 12, Article V for comments on location of provisions granting the governor power related to the legislature.

Section 8. No senator or representative shall, during the term for which he shall have been elected, be appointed to any civil office under the state; and no member of congress, or other person holding an office (except notary public, or in the militia) under the United States or this state, shall be a member of either house during his continuance in office.	No change from Article V, Section 7.

Comment: The subcommittee agrees with the Legislative Council conclusion that this section is adequate and should be retained. The purpose of this article is to prevent plural office holding.

Section 9. Each house shall choose its officers, and each shall judge the elections, returns, and qualifications of its members.	The senate shall, at the beginning and close of each regular session, and at such other times as may be necessary, elect one of its members president pro tempore. The house of representatives shall elect one of its members speaker. Each house shall choose its other officers, and shall judge of the election, returns, and qualifications of its members. [Article V, Section 9]

Comment: This section revises present Section 9, Article V, to delete reference to specific legislative officers. Proposed Section 3, Article V, makes the lieutenant governor the president of the senate and refers to the president pro tempore of the senate. Proposed Sections 12 and 13, Article V, and proposed Section 7, Article IV, refer to the presiding officers of both houses.

Section 10. A majority of each house shall constitute a quorum to do business but a small number may adjourn	A majority of each house shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and

from day to day, and compel the attendance of absent members.	compel the attendance of absent members, in such manner and under such penalties as each house may prescribe. [Article V, Section 10]

Comment: This section is the same as present Section 10, except for the deletion of the last phrase of the present section.

Section 11. Each house shall determine the rules of its proceedings and punish its members. It may expel a member with the concurrence of two-thirds of all its members.	Each house shall have the power to determine the rules of its proceedings, and punish its members or other persons for contempt or disorderly behavior in its presence; to protect its members against violence or offers of bribe or private solicitation, and with the concurrence of two-thirds, to expel a member, and shall have all other powers necessary for a legislative assembly of a free state. A member expelled for corruption shall not thereafter be eligible to either house of the legislative assembly; and punishment for contempt or disorderly behavior shall not bar a criminal prosecution for the same offense. [Article V, Section 11]

Comment: This section is the same as present Section 11, except detail in the present section is removed.

Section 12. Each house shall keep a journal of its proceedings, and publish the same unless the public security otherwise requires. The ayes and noes on any question shall, at the request of any two members, be entered on the journal.	Each house shall keep a journal of its proceedings, and may, in its discretion, from time to time, publish the same, except such parts as require secrecy, and the ayes and noes on any question shall, at the request of any two members, be entered on the journal. [Article V, Section 12]

Comment: This section is the same as present Section 12, Article V, except for the direction to the legislature to publish the journal and a rephrasing of the part relating to public security based on Section 18, Article IV of the Michigan constitution.

Section 13. Neither house may adjourn nor recess for longer than three days unless the other concurs.	Neither house shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting. [Article V, Section 14]

Comment: This section is a revision of present Section 14, Article V, based on Article II, Section 10, of the Alaska Constitution. Only two state constitutions (Connecticut and North Carolina) have no provision for adjournment by one house by itself for a limited time; such a provision is unnecessary in Nebraska because of the unicameral legislature.

Section 14. The members of the legislative assembly shall, in all cases, except treason, felony, violation of their oath of office, and breach of the peace, be privileged from arrest during their attendance at the sessions of their respective houses, and in going to and returning from the same; and for any speech or debate in either house they shall not be questioned in any other place.

No change from Article V, Section 15.

Comment: Only six state constitutions (Florida, Maryland, New York, North Carolina, Rhode Island and Vermont) do not provide immunity from arrest during sessions. The subcommittee agrees with the Legislative Council conclusion that this section is adequate and should be retained.

Section 15. All civil officers of the state are subject to impeachment by the legislature. Impeachment shall originate in the house of representatives and must be approved by two-thirds majority vote of all of its members. The motion for impeachment shall list fully the basis for the proceeding. Trial on impeachment shall be conducted by the senate. A supreme court justice designated by the supreme court shall preside at the trial. Concurrence of two-thirds of the members of the senate is required for a judgment of impeachment. The judgment shall not extend beyond the removal from office, but shall not prevent proceedings in the courts on the same or related charges.

The sole power of impeachment shall vest in the house of representatives; the concurrence of a majority of all the members being necessary to the exercise thereof. Impeachment shall be tried by the senate sitting for that purpose, and the senators shall be upon oath or affirmation to do justice according to law and evidence. When the governor or lieutenant governor is on trial, the chief justice of the supreme court shall preside. No person shall be convicted without concurrence of two-thirds of the senators elected. [Article V, Section 16]

The governor, and other state and judicial officers, except justices of the peace, shall be liable to impeachment for high crimes and misdemeanors, or malfeasance in office, but judgment in such cases shall only extend to removal from office and disqualification to hold any office of honor, trust, or profit under the laws of the state. The party, whether convicted or acquitted, shall,

nevertheless be liable to prosecution, trial, judgment, and punishment according to law.
[Article V, Section 17]

Comment: This revision of the present impeachment provisions is based on Section 20, Article II of the Alaska Constitution. The vote on impeachment in the House is increased from a majority of the members to two-thirds majority vote of all members. The revision provides that a supreme court justice designated by the supreme court shall preside at the trial and deletes the special provision for trial of the governor and lieutenant governor.

Section 16. No law shall be passed except by bill, and no bill shall be so altered or amended on its passage through either house as to change its original purpose.

No change from Article V, Section 19.

Comment: Of the fifty state constitutions, only thirteen prohibit altering the original purpose of a bill by amendment. The subcommittee concurs with the Legislative Council recommendation that this section is adequate and should be retained.

Section 17. The enacting clause of every law shall be as follows: "Be it enacted by the Legislative Assembly of the State of Montana."

No change from Article V, Section 20.

Comment: Only five state constitutions fail to specify an explicit enacting clause (California, Delaware, Georgia, Pennsylvania, and Virginia). The subcommittee concurs with the Legislative Council recommendation that this section is adequate and should be retained.

Section 18. No bill, except general appropriation bills, and bills for the codification and general revision of the laws, shall be passed containing more than one subject, which shall be clearly expressed in its title; but if any subject shall be embraced in any act which shall not be expressed in the title, such an act shall be void only as to so much thereof as shall not be expressed.

No change from Article V, Section 23.

Comment: Forth-one state constitutions limit bills to one subject; fifteen permit exceptions such as appropriations and general statutory revisions; twenty-six do not permit exceptions; and nine have no limitations

on the number of subjects in a bill. (For additional information on the subjects in a bill, see Montana Legislative Council, Bill Drafting Manual, pages 37-39.) The subcommittee concurs with the Legislative Council recommendation that this section is adequate and should be retained.

Section 19. No bill shall become law except by a vote of a majority of all the members present in each house, nor unless on its final passage the vote taken by ayes and noes, and the names of those voting be entered on the journal.

No change from Article V, Section 24.

Comment: Thirty-two state constitutions require entry of the ayes and noes in the journal on final passage of a bill; nineteen do not require that the names of members be entered; and eighteen require entry of votes in the journal at the request of various numbers of members. The subcommittee concurs with the Legislative Council recommendation that this section is adequate and should be retained.

Section 20. The legislative assembly in order to insure continuity of state and local governmental operations in a period of emergency resulting from a disaster caused by enemy attack may enact laws:

(1) to provide for prompt and temporary succession to the powers and duties of elected and appointed public officers who are killed or incapacitated.

(2) to adopt other measures that may be necessary to insure the continuity of governmental operations.

Such laws shall be effective only during the emergency that affects a particular office or governmental operation, and such laws may deviate from other provisions of the Montana constitution, including but not limited to the following sections:

(1) Section 5, Article V, succession to governor.

(2) Section 7, Article IV, special legislative sessions.

(3) Section 10, Article IV, quorum to do business in each house.

(4) Section 1, Article V, duties of executive officers of state.

(5) Section 8, Article V, appointments by governor.

The legislative assembly in order to insure continuity of state and local governmental operations in a period of emergency resulting from a disaster caused by enemy attack may enact laws:

(1) to provide for prompt and temporary succession to the powers and duties of elected and appointed public officers who are killed or incapacitated.

(2) to adopt other measures that may be necessary to insure the continuity of governmental operations.

Such laws shall be effective only during the emergency that affects a particular office or governmental operation, and such laws may deviate from other provisions of the Montana constitution, including but not limited to the following sections:

(1) Section 3, Article X, seat of state government.

(2) Section 2, Article XVI, seat of county governments.

(3) Section 16, Article VII, succession to governor.

(4) Section 4, Article XVI, vacancy on board of county commissioners.

(5) Section 6, Article XVI, other vacancies in county government.

(6) Section 45, Article V, vacancies in legislative sessions.
(7) Section 11, Article VII, special legislative sessions.
(8) Section 5, Article V, length of legislative session.
(9) Section 10, Article V, quorum to do business in each house.
(10) Section 6, Article XIX, location of county offices.
(11) Section 1, Article VII, duties of executive officers of state.
(12) Section 7, Article VII, appointments by governor.
[Article V, Section 46]

Comment: This section is identical to present Section 46, Article V, except for the references to individual sections under subsection 2, which have been revised to match the proposed constitution. The subcommittee concurs with the Legislative Council recommendation that this section is adequate and should be retained.

Section 21. The legislative assembly shall have the power to alter, revoke, or annul any charter of incorporation whenever in its opinion it may be injurious to the citizens of the state.

The legislative assembly shall have the power to alter, revoke or annul any charter of incorporation existing at the time of the adoption of this constitution, or which may be hereafter incorporated, whenever in its opinion it may be injurious to the citizens of the state.
[Transfer Article XV, Section 3]

Comment: The judicial subcommittee recommended that this section from the present article on corporations other than municipal be transferred to the legislative article. The section is the same as present Section 3, Article XV, except for deletion of obsolete language.

Section 22. The legislative assembly shall pass no law for the benefit of a railroad or other corporation, or any individual or association of individuals, retrospective in its operation, or which imposes on the people of any county or municipal subdivision of the state, a new liability in respect to transactions or considerations already passed.

Transfer. No change from Article XV, Section 13.

Comment: Although the Legislative Council recommended that present Section 13, Article XV, be deleted, the judicial subcommittee recommends

that this section be retained and transferred to the legislative article. This section is probably obsolete and not necessary. It could be revised: "The legislative assembly shall pass no law retrospective in its operation."

Section 23. It shall be unlawful for any person, company or corporation to require of its servants or employees, as a condition of their employment or otherwise, any contract or agreement whereby such persons, company or corporation, shall be released or discharged from liability or responsibility on account of personal injuries received by such servants or employees while in the service of such person, company or corporation, by reason of negligence of such person, company or corporation or the agents or employees thereof; and such contracts shall be absolutely null and void.

Transfer. No change from Article XV, Section 16.

Comment: The judicial subcommittee recommends that this section be transferred from Corporations Other Than Municipal to the legislative article. The Legislative Council concluded that this section was adequate. The section appears to be statutory and is probably not necessary.

Section 24. The legislative assembly shall have no power to authorize lotteries, or gift enterprises for any purpose, and shall pass laws to prohibit the sale of lottery or gift enterprise tickets in this state.

Transfer. No change from Article XIX, Section 2.

Comment: This section has been transferred from the present amendment article (Article XIX) to the proposed legislative article for discussion because the section is a limit on the authority of the legislature. There is no subcommittee report on this article. The present prohibition is phrased as as a limitation on the authority of the legislature and a direction to the legislature to pass laws to prohibit the sale of lottery or gift enterprise tickets. Three amendments were introduced in the 1969 legislative assembly to modify this prohibition against games of chance (SB 39; HB 266; HB 400). House bill 400 was approved by the legislature but vetoed by the governor.

Section 25. No perpetuities shall be allowed, except for charitable purposes.

Transfer. No change from Article XIX, Section 5.

Comment: This section has been transferred from the present amendment article (Article XIX) to the proposed legislative article for discussion.

All sections in the present amendment article have been transferred from the proposed amendment article which do not concern amendment or revision.

There is no subcommittee report on this article. None of the six constitutions used by the Legislative Council for comparative purposes have similar provisions.

Section Transferred

Every order, resolution or vote, in which the concurrence of both houses may be necessary, except on the question of adjournment, or relating solely to the transaction of the business of the two houses, shall be presented to the governor, and before it shall take effect be approved by him, or, being disapproved, be repassed by two-thirds of both houses, as prescribed in the case of a bill.
[Article V, Section 40]

Comment: This section was revised and transferred to the proposed Article V, Section 13. For comment, see that section.

Sections Deleted

Repealed by an amendment proposed in 1965 and adopted December 6, 1966.
[Article V, Section 4]

Comment: This section was repealed by an amendment proposed in 1966 and adopted December 6, 1966.

No member of either house shall, during the term for which he shall have been elected, receive any increase of salary or mileage under any law passed during such term.
[Article V, Section 8]

Comment: Because of the language "no legislative assembly shall fix its own compensation" contained in proposed Section 6, Article IV, this section is unnecessary. The subcommittee concurs with the Legislative Council recommendation that this section is unnecessary and should be deleted.

The sessions of each house and of the committees of the whole shall be open, unless the business is such as requires secrecy.
[Article V, Section 13]

Comment: The subcommittee recommends this section be deleted. Four of the six constitutions used for comparative purposes by the Legislative Council do not have similar provisions.

All officers not liable to impeachment shall be subject to removal for misconduct or malfeasance in office, in such manner as may be provided by law.
[Article V, Section 18]

Comment: The subcommittee recommends deletion of this section. The Council concluded that this section was adequate. None of the six constitutions used for comparative purposes by the Legislative Council have similar provisions.

No bill for the appropriation of money, except for the expenses of the government, shall be introduced within ten days of the close of the session, except by unanimous consent in the house in which it is sought to be introduced.
[Article V, Section 21]

Comment: None of the six constitutions used for comparative purposes have similar provisions. Any time limits for introduction of bills should be set by legislative rule. The subcommittee concurs with the Legislative Council recommendation that this section should be deleted.

No bill shall be considered or become law unless referred to a committee, returned therefrom, and printed for the use of the members.
[Article V, Section 22]

Comment: Only one of the six constitutions used for comparative purposes has a similar provision. The subcommittee feels that procedure for consideration of legislation should be set by legislative rule. The subcommittee feels that this section should be deleted.

No law shall be revised or amended, or the provisions thereof extended by

reference to its title only, but so much thereof as is revised, amended or extended shall be re-enacted and published at length.
[Article V, Section 25]

Comment: Three of the six constitutions used for comparative purposes contain similar provisions. The question of whether or not a subsection of paragraph can be amended without setting out the parent section at length has never been adjudicated in Montana (see Montana Legislative Council, Bill Drafting Manual, pages 50-54 for detailed discussion of this point). The subcommittee feels this section is ambiguous, recommends deletion, and believes this type of rule could be embodied in the rules of the legislature.

The legislative assembly shall not pass local or special laws in any of the following enumerated cases, that is to say: For granting divorces; laying out, opening, altering or working roads or highways; vacating roads, town plats, streets, alleys or public grounds; locating or changing county seats; regulating county or township affairs; regulating the practice in courts of justice; regulating the jurisdiction and duties of justices of the peace, police magistrates or constables; changing the rules of evidence in any trial or inquiry; providing for changes of venue in civil or criminal cases; declaring any person of age; for limitation of civil actions, or giving effect to informal or invalid deeds; summoning or impaneling grand or petit juries; providing for the management of common schools; regulating the rate of interest on money; the opening or conducting of any election or designating the place of voting; the sale or mortgage of real estate belonging to minors or others under disability; chartering or licensing ferries or bridges or toll roads; chartering banks, insurance companies and loan and trust companies; remitting fines, penalties or forfeitures; creating increasing or decreasing fees, percentages or allowances of public officers, changing the law of descent; granting to any corporation, association or individual the right to lay down

railroad tracks, or any special or exclusive privilege, immunity or franchise whatever; for the punishment of crimes; changing the names of persons or places; for the assessment or collection of taxes; affecting the estates of deceased persons, minors or others under legal disabilities; extending the time for the collection of taxes; refunding money paid into the state treasury; relinquishing or extinguishing in whole or in part the indebtedness, liability or obligation of any corporation or person to this state, or to any municipal corporation therein; exempting property from taxation; restoring to citizenship persons convicted of infamous crimes; authorizing the creation, extension or impairing of liens; creating offices, or prescribing the powers or duties of officers in counties, cities, township or school districts; or authorizing the adoption or legitimation of children. In all other cases where a general law can be made applicable, no special law shall be enacted.
[Article V, Section 26]

Comment: Two of the six constitutions used for comparative purposes contain similar provisions; one requires public notice of intent prior to passage of special or local laws. Of the fifty state constitutions, thirty-one prohibit special laws if general laws can be applied; one states that the legislature shall provide by general law for matters usually pertaining to special legislation; four do not prohibit special legislation if general laws can be applied; and fourteen do not have general provisions on special legislation. The subcommittee believes that this section should be deleted. The equal protection clause probably makes it unnecessary. If a provision is desired it could simply state: "The legislative assembly shall not pass local or special laws in any case in which a general law can be made applicable." This is based on the first clause and last sentence of the present provision.

The presiding officer of each house shall, in the presence of a house over which he presides, sign all bills and joint resolutions passed by the legislative assembly immediately after their titles have been publicly read, and the fact of signing shall be at once entered upon the journal.
[Article V, Section 27]

Comment: None of the six constitutions used for comparative purposes have similar provisions. The subcommittee concurs with the Legislative Council that signing bills into open session is an unnecessary, time-consuming procedure. If notification to the house is necessary, the presiding officer could accomplish this by an announcement of the bills which have been signed. This section is inadequate and should be deleted. This type of rule could be embodied in rules of the legislature.

The legislative assembly shall prescribe by law the number, duties, and compensation of the officers and employees of each house; and no payment shall be made from the state treasury, or be in any way authorized to any such person, except to an acting officer or employee elected or appointed in pursuance of law.
[Article V, Section 28]

Comment: None of the six constitutions used for comparative purposes have similar provisions. The Council concludes that this section is unnecessary and should be repealed. This type of rule could be embodied in rules of the legislature.

No bill shall be passed giving any extra compensation to any public officer, servant or employee, agent or contractor, after services shall have been rendered or contract made, nor providing for the payment of any claim made against the state without previous authority of law, except as may be otherwise provided herein.
[Article V, Section 29]

Comment: None of the six constitutions used by the Legislative Council for comparative purposes have similar provisions. The Council said the section may be unnecessary. The subcommittee recommends the section be deleted.

All stationery, printing, paper, fuel and lights used in the legislative and other departments of government, shall be furnished, and the printing, and binding and distribution of the laws, journals, and department reports and other printing and binding, and the repairing and furnishing the halls and rooms used for the meeting of the legislative

assembly, and its committees shall be performed under contract, to be given to the lowest responsible bidder below such maximum price and under such regulations as may be prescribed by law. No member or officer of any department of the government shall be in any way interested in any such contract; and all such contracts shall be subject to the approval of the governor and state treasurer.
[Article V, Section 30]

Comment: None of the six constitutions used for comparative purposes have similar provisions on supplies and the like; only one prohibits a legislator from having an interest in a contract authorized by the legislature. Only eight of the fifty state constitutions prohibit legislators from having an interest in contracts authorized by them. Commenting on consideration of this section at the 1889 convention, one writer noted: "This mighty guarantee of the liberties of a sovereign people was so perfect that it too passed without debate." A previous Council (1961-62) examined this section and concluded that it is obsolete. The subcommittee concurs with the Legislative Council conclusion that this section should be deleted.

Except as otherwise provided in this constitution, no law shall extend the term of any public officer, or increase or diminish his salary or emolument after his election or appointment: provided, that this shall not be construed to forbid the legislative assembly from fixing the salaries or emoluments of those officers first elected or appointed under this constitution, where such salaries or emoluments are not fixed by this constitution.
[Article V, Section 31]

Comment: None of the six constitutions used for comparative purposes have similar provisions. A proposed amendment defeated in 1968 would have deleted the words "or increase" from this section. This prohibition on the legislature is probably not necessary and the subcommittee recommends that this section be deleted.

All bills for raising revenue shall originate in the house of representatives; but the senate may propose amendments, as in the case of other bills.
[Article V, Section 32]

Comment: Only two of the six constitutions used for comparative purposes have similar provisions. The Montana Supreme Court has ruled that this restriction does not apply to bills for other purposes which incidentally create revenue, Evers v. Hudson, 36 M 135, or if revenue is a collateral and indirect result of the operation of the bill, State v. Driscall, 101 M 348. The Council concluded that this section may be unnecessary, but it is adequate. The subcommittee recommends that this section be deleted. The distinction between houses is unnecessary.

The general appropriation bills shall embrace nothing but appropriations for the ordinary expenses of the legislative, executive and judicial departments of the state, interest on the public debt and for public schools. All other appropriations shall be made by separate bills, each embracing but one subject. [Article V, Section 33]

Comment: The subcommittee feels that this section is unnecessary and should be deleted.

No money shall be paid out of the treasury except upon appropriations made by law, and on warrant drawn by the proper officer in pursuance thereof, except interest on the public debt. [Article V, Section 34]

Comment: None of the six constitutions used for comparative purposes have similar provisions. The Council concluded that this section may be unnecessary. The subcommittee recommends that it be deleted. The section is statutory in nature.

No appropriation shall be made for charitable, industrial, educational or benevolent purposes to any person, corporation or community not under absolute control of the state, nor to any denominational or sectarian institution or association. [Article V, Section 35]

Comment: The subcommittee feels this section is unnecessary because of the provision in proposed Article II, Section 6: "No law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof."

The legislative assembly shall not delegate to any special commission, private corporation or association, any power to make, supervise or interfere with any municipal improvement, money, property or effects, whether held in trust or otherwise, or to levy taxes, or to perform any municipal functions whatever.
[Article V, Section 36]

Comment: None of the six constitutions used for comparative purposes have similar provisions. The subcommittee feels this section is unnecessary and should be deleted. This section is typical of the restraints that were imposed on legislatures during the 19th century.

No act of the legislative assembly shall authorize the investment of trust funds of executors, administrators, guardians or trustees in the bonds or stock of any private corporation.
[Article V, Section 37]

Comment: None of the six constitutions used for comparative purposes have similar provisions. Of the fifty state constitutions, only two appear to have a similar provision. Section 38, Article III of the Wyoming constitution is identical to this section. Section 74, Article IV of the Alabama constitution was virtually identical until amended to allow investments to the amount guaranteed by the federal government. The subcommittee feels this section is obsolete and recommends the section be deleted and discretion be left to the legislature.

The legislative assembly shall have no power to pass any law authorizing the state, or any county in the state, to contract any debt or obligation in the construction of any railroad, nor give or loan its credit to or in aid of the construction of the same.
[Article V, Section 38]

Comment: The subcommittee concurs with the Legislative Council conclusion that this section is obsolete and should be deleted. This prohibition is typical of the restraints that were imposed on legislatures during the 19th century.

Except as hereinafter provided, no obligation or liability of any person, association or corporation, held or owned by the state, or any municipal corporation therein, shall ever be

exchanged, transferred, remitted, released or postponed, or in any way diminished by the legislative assembly; nor shall such liability or obligation be extinguished, except by the payment thereof into the proper treasury. It shall however be lawful for the legislative assembly, in such manner as it may direct, to authorize the cancellation of any personal property taxes which are not a lien on real estate and which have been delinquent for ten (10) years or more.

It shall also be lawful for the legislative assembly, in such manner as it may direct, to authorize the cancellation of any contractual obligation owed to or held by a county, for seed grain, feed or other relief, the collection of which obligation is barred by the statute of limitations.
[Article V, Section 39]

Comment: This section is obsolete. It is typical of restraints placed on the legislature in the 19th century. It was amended to provide the two exceptions in the last two paragraphs in 1948. None of the six constitutions used for comparative purposes have similar provisions.

If any person elected to either house of the legislative assembly shall offer or promise to give his vote or influence in favor of or against any measure or proposition pending or proposed to be introduced into such legislative assembly, the person making such offer or promise shall be deemed guilty of solicitation of bribery. If any member of the legislative assembly shall give his vote or influence for or against any measure or proposition pending or proposed to be introduced in such legislative assembly, or offer, promise or assent so to do, upon condition that any other member will give, or will promise or assent to give his vote or influence in favor of or against any other measure or proposition pending or proposed to be introduced in such legislative assembly, or in consideration that any other member hath given his vote or influence

for or against any other measure or proposition in such legislative assembly, he shall be deemed guilty of bribery; and any member of the legislative assembly, or person elected thereto, who shall be guilty of either such offenses, shall be expelled and shall not thereafter be eligible to the legislative assembly, and on the conviction thereof in the civil courts, shall be liable to such further penalty as may be prescribed by law.
[Article V, Section 41]

Any person who shall directly or indirectly offer, give or promise any money or thing of value, testimonial, privilege or personal advantage, to any executive or judicial officer or member of the legislative assembly, to influence him in the performance of any of his official or public duties, shall be deemed guilty of bribery, and be punished in such manner as shall be provided by law.
[Article V, Section 42]

The offense of corrupt solicitation of members of the legislative assembly, or or public officers of the state, or of any municipal division thereof, and the occupation or practice of solicitation of such members or officers, to influence their official action, shall be defined by law, and shall be punishable by fine and imprisonment.
[Article V, Section 43]

Comment: The subcommittee concludes that these sections are statutory and agrees with the Legislative Council recommendation that they should be deleted and replaced by statute.

A member who has a personal or private interest in any measure or bill proposed or pending before the legislative assembly, shall disclose the fact to the house of which he is a member, and shall not vote thereon.
[Article V, Section 44]

Comment: None of the six constitutions used for comparative purposes have similar provisions; only eleven other state constitutions have such

provisions. If broadly interpreted and observed, this section might be virtually unworkable. Moreover, this section may be used by legislators to avoid recorded votes on controversial bills more often than to observe the conflict of interest concept. The subcommittee agrees with the Legislative Council conclusion that this section is inadequate and should be repealed and replaced by a statute.

REVISION OF EXECUTIVE ARTICLE
[Article V in Proposed Constitution; Article VII in Present Constitution]

COMPARISON OF PRESENT ARTICLE VII WITH PROPOSED ARTICLE V
AND RECOMMENDATIONS OF LEGISLATIVE COUNCIL

Present Article	Legis. Council Recommendation	Subcommittee Recommendation	Location in Proposed Article
VII, Sec. 1	revise	revise	Section 1,2
2	revise	revise	1,2
3	repeal	revise	1,2
4	repeal	revise	1,4
5	adequate	revise	1
6	adequate	retain	6
7	adequate	revise	8
8	repeal	delete	--
9	adequate	revise	10
10	revise	revise	11
11	revise	revise	12
12	revise	revise	13
13	adequate	revise	14
14	adequate	revise	5
15	adequate	revise	3,5
16	revise	revise	5
17	repeal	delete	--
18	adequate, unnec.?	delete	--
19	repeal	delete	--
20	revise	delete	--
--	---	new	7
--	---	new	8
--	---	new	9
		transferred from Article V, Sec. 40	13

Proposed Constitution

Article V
THE EXECUTIVE

Section 1. The executive power of the state shall be vested in a governor.

The governor shall be elected by the qualified voters of this state at a general election. The person receiving the highest number of votes shall be the governor. In case of a tie vote, the selection of the governor shall be determined in accordance with law.

The term of office of the governor shall begin at noon on the first Monday in December next following his election and end at noon on the first Monday in December, four years thereafter.

No person shall be eligible for the office of governor unless he shall be a qualified voter, have attained the age of thirty years, and have been a resident of this state for five years immediately preceding his election.

The governor shall not hold any other office of employment or profit under the state or the United States during his term of office.

Present Constitution

Article VII
EXECUTIVE DEPARTMENT

The supreme executive power of the state shall be vested in the governor, who shall see that the laws are faithfully executed.
[Article VII, Section 5]

The executive department shall consist of a governor, lieutenant-governor, secretary of state, attorney general, state treasurer, state auditor, and superintendent of public instruction, each of whom shall hold his office for four years, or until his successor is elected and qualified, beginning on the first Monday of January next succeeding his election, except that the terms of office of those who are elected at the first election, shall begin when the state shall be admitted into the Union, and shall end on the first Monday of January, A.D. 1893. The officers of the executive department, excepting the terms of lieutenant governor, shall during their terms of office reside at the seat of government, where they shall keep the public records, books and papers. They shall perform such duties as are prescribed in this constitution and by the laws of the state. The state treasurer shall not be eligible to his office for the succeeding term.
[Article VII, Section 1]

The officers provided for in section 1 of this article, shall be elected by the qualified electors of the state at the time and place of voting for members of the legislative assembly, and the persons respectively, having the highest number of votes for the office voted for shall be elected; but if two or more shall have an equal and the highest number of votes for any one of said offices, the two houses of the legislative assembly, at its next regular session, shall forthwith by joint

ballot, elect one of such persons for said office. The returns of election for the officers named in section 1 shall be made in such manner as may be prescribed by law, and all contested elections of the same, other than provided for in this section, shall be determined as may be prescribed by law. [Article VII, Section 2]

No person shall be eligible to the office of governor, lieutenant governor, or superintendent of public instruction, unless he shall have attained the age of thirty years at the time of his election, nor to the office of secretary of state, state auditor, or state treasurer, unless he shall have attained the age of twenty-five years, nor to the office of attorney general unless he shall have attained the age of thirty years, and have been admitted to practice in the supreme court of the state or territory of Montana, and be in good standing at the time of his election. In addition to the qualifications above prescribed, each of the officers named shall be a citizen of the United States, and have resided within the state or territory two years next preceding his election.
[Article VII, Section 3]

Until otherwise provided by law, the governor, secretary of state, state auditor, treasurer, attorney general and superintendent of public instruction, shall quarterly, as due, during their continuance in office, receive for their services compensation, which is fixed as follows:

Governor, five thousand dollars per annum; Secretary of state, three thousand dollars per annum; Attorney general, three thousand dollars per annum; State treasurer, three thousand dollars per annum; State auditor, three thousand dollars per annum, Superintendent of public instruction, two thousand five hundred dollars per annum.

The lieutenant governor shall receive the same per diem as may be prescribed by law for the speaker of the legislative assembly, to be allowed only during sessions of the legislative assembly.

The compensation enumerated shall be in full for all services by said officers respectively rendered in any official capacity or employment whatever during their respective terms of office, and the salary of no official shall be increased during his term of office. No officer named in this section shall receive, for the performance of any official duty, any fee for his own use, but all fees fixed by law for the performance by any officer of any official duty, shall be collected in advance, and deposited with the state treasurer quarterly to the credit of the state. No officer mentioned in this section shall be eligible to, or hold any other public office, except member of the state board of education during his term of office.
[Article VII, Section 4]

Comment: The cornerstone of the proposed executive article is the limitation of elective officials to two: the governor and lieutenant governor, who would be elected jointly. The term of office would be four years, with no limitation on the number of terms which could be served. The term of office would begin at noon of the first day in December following his election. This would allow the governor to be in office for a month before the legislature convenes in January.

In 1962 the Legislative Council noted "(1) The governor's authority over the executive branch should be implemented by eliminating most elective officials. . . ." [Montana Legislative Council, Executive Reorganization, Report Number 7, November, 1962, p. x]. The 1962 report recommended the elimination of the state treasurer as a constitutional office. The Legislative Council in 1968 recommended "At a minimum, the constitutional status of the state treasurer should be eliminated."

Almost thirty years ago the effect of a large slate of elected officers on the power of the governor was noted:

> So far as elective officers are concerned, (six outside of the Governor) it is impossible for the Governor, or any other body, to exercise control over them, since they are responsible to the voters of the State, rather than to the Governor. . . .Present day administrative reorganization is providing

for fewer elective officers, usually only three including the Governor. [Report of Joint Committee on State Governmental Organization, House Journal of the Twenty-seventh Legislative Assembly of the State of Montana, 1941, p. 400.]

Former Governor Joseph M. Dixon stated in 1921: "Let us nominate and elect the Chief Executive of the State, then give him full power to name his assistants in administering the various departments of the state government, and we will know exactly where to place our finger in locating blame or praise." [Joseph M. Dixon, Message to the Seventh Legislative Assembly (Helena: State Publishing Co., 1921), p. 20] Former Governors Same C. Ford, John W. Bonner, Donald G. Nutter, Tim M. Babcock and Governor Forrest Anderson have made similar statements in formal messages to the Legislative Assembly.

The proposed Section 1 is a revision of present Sections 1, 2, 3, 4, and 5, based on Article IV, Section 1 of the Hawaii Constitution. The first sentence is a revision of present Section 5. Although the present constitution vests "supreme executive power" a committee of the Montana Legislative Assembly analyzed this grant of power as follows:

> The Governor is vested with the supreme executive power of the state and it is his duty to see to it that the laws are faithfully executed. Yet, a number of departments, boards, and commissions have little or no direct connection with the Governor, and in other instances, the lines of authority are not set up clearly. Even if the Governor had the authority with which he is nominally vested, it would be impossible for him to keep in touch with all the boards, commissions and offices that at the present exist, let alone to supervise and coordinate their activities." [Report of Joint Committee on State Governmental Organization, House Journal of the Twenty-seventh Legislative Assembly of the State of Montana, 1941, p. 399.]

Recognizing that the grant of "executive power" to the governor is not sufficient if other constitutional provisions create a fragmented executive structure beyond the effective control of the governor, the subcommittee has recommended elimination of all other elected and appointed executive and administrative officers, boards and commissions from the constitution. These include:

Elected Officials

- Governor (Article VII, section 1) (retained)
- Lieutenant Governor (Article VII, section 1) (retained)
- Secretary of State (Article VII, section 1)
- Attorney General (Article VII, section 1)
- State Treasurer (Article VII, section 1)
- State Auditor (Article VII, section 1)
- Superintendent of Public Instruction (Article VII, section 1)

Boards and Commissions

Board of Education (Article XI, section 11)
State Board of Land Commissioners (Article XI, section 4)
Board of State Prison Commissioners (Article VII, section 20)
Board of Examiners (Article VII, section 20)
Depository Board (Article XII, section 14)
Board of Pardons (Article VII, section 9)
State Board of Equalization (Article XII, section 15)

Departments and Appointed Officials

State Examiner (Article VII, section 20)
Department of Labor and Industry (Article XVIII, section 1)
Department of Agriculture (Article XVIII, section 1)

A unified and integrated executive department under the supervision and control of the governor is provided for in proposed Sections 8 and 9.

The second paragraph is a revision of present Sections 1 and 2. Perhaps provision should be made for the timing of the election of governor and lieutenant governor. The effect of present Section 1 is to elect the governor in the same year as presidential elections.

The model executive article prepared by the National Governors Conference and the Model State Constitution suggest election of the governor at the general election between presidential elections. State issues and races are subordinated to national issues in presidential election years and state candidates would probably receive more attention if elected midway between presidential elections.

The residence requirement for governor is increased from two years to five and other qualifications in present Section 3 are retained; i.e., thirty years of age and qualified voter.

The prohibition on holding other office or employment in present Section 4 is retained in the last paragraph of the proposed section.

Section 2. There shall be a lieutenant governor, who shall have the same qualifications as the governor. He shall be elected at the same, for the same term, and in the same manner, as the governor; provided that the votes cast in the general election for the nominee for governor shall be deemed cast for the nominee for lieutenant governor of the same political party. He shall perform such duties as may be prescribed by law

See section 1 above for sections 1, 2, 3 of Article VII.

Comment: This section creates the office of lieutenant governor and provides that the lieutenant governor be elected jointly. An amendment

providing for the election of the governor and lieutenant governor as a unit was introduced in the 1969 Legislative Assembly and received wide support. Seven states now provide for joint election of governor and lieutenant governor. The significance of the joint or team election feature is primarily derived from the proposition that if the lieutenant governor is elected on the same party ticket as the governor and if department heads are appointed by the governor, the successor would presumably have a political philosophy harmonious with that of the governor.

The provision that the lieutenant governor shall perform duties as may be prescribed by law allows for future expansion of the duties of the lieutenant governor. The lieutenant governor could be given additional duties as an "assistant governor."

This section is a revision of the provision for lieutenant governor in present Section 1, based on the Hawaii Constitution, Article IV, Section 2.

Section 3. The lieutenant governor shall be president of the senate, but shall vote only when the senate is equally divided. In case of the absence or disqualification of the lieutenant governor, the president pro tempore of the senate shall perform the duties of the lieutenant governor until the vacancy is filled or the disability removed.

The lieutenant governor shall be president of the senate, but shall vote only when the senate is equally divided. In case of the basence or disqualification of the lieutenant-governor, from any cause which applies to the governor, or when he shall hold the office of governor, then the president pro tempore of the senate shall perform the duties of the lieutenant governor until the vacancy is filled or the disability removed.
[Article VII, Section 15]

Comment: This section is the same as present Section 15, except for removal of surplus language. Some constitutions place this type of section in the legislative article because it creates an office of the legislature.

Section 4. The compensation of the governor and the lieutenant governor shall be prescribed by law and shall not be increased or diminished during a single term of office.

See Section 1 above for Article VII, Section 4.

Comment: This section replaces present Section 4. The Legislative Council concluded that present Section 4 was obsolete and should be repealed. The language of the revision is from the Section 5 of the Model Executive Article prepared by the National Governor's Conference.

Section 5. When the office of governor is vacant, the lieutenant governor

In case of the failure to qualify, the impeachment or conviction of felony or

shall become governor. In the event of the absence of the governor from the state, or his inability to exercise and discharge the powers and duties of his office, such powers and duties shall devolve upon the lieutenant governor during such absence or disability.

When the office of lieutenant governor is vacant, or in the event of the absence of the lieutenant governor from the state, or his inability to exercise and discharge the powers and duties of his office, such powers and duties shall devolve upon such officers in such order of succession as may be provided by law.

In the event of the impeachment of the governor or of the lieutenant governor, he shall not exercise the powers of his office until acquitted.

infamous crime of the governor, or his death, removal from office, resignation, absence from the state, or inability to discharge the powers and duties of his office, the powers, duties and emoluments of the office, for the residue of the term, or until the disability shall cease, shall devolve upon the lieutenant governor. [Article VII, Section 14]

In case of failure to qualify in his office, death, resignation, absence from the state, impeachment, conviction of felony or infamous crime, or disqualification from any cause, of both the governor and lieutenant governor, the duties of the governor shall devolve upon the president pro tempore of the senate until such disqualification of either the governor or lieutenant governor be removed, or the vacancy filled, and if the president pro tempore of the senate, for any of the above-named causes, shall become incapable of performing the duties of governor, the same shall devolve upon the speaker of the house. [Article VII, Section 16]

Comment: This section, which replaces present Section 14, provides for succession to office of governor and lieutenant governor and is based on Section 4 of the Hawaii constitution. There might be a possible conflict between the language in the second sentence of proposed Section 3 and the second paragraph of this section. Both refer to the succession to the duties of lieutenant governor.

Section 6. The governor shall be the commander-in-chief of the forces of the state, except when these forces are in the actual service of the United States, and shall have power to call out any part of the whole of said forces to aid in the execution of the laws, to suppress insurrection or repel invasion.

No change from Article VII, Section 6.

Comment: The subcommittee concludes after a review of present Article VII, Section 6 and present Article XIV (Military Affairs) that a state militia is desirable, but an entire constitutional article should not be devoted to military affiars. The Commission agrees with the Legislative Council conclusion that the present Section 6, Article VII designating

the governor as commander-in-chief and giving the governor the power to use the militia to "aid in the execution of laws, to suppress insurrection, or repel invasion" is adequate. The subcommittee recommends, as did the Legislative Council, that present Article XIV (Military Affairs) be deleted in its entirety.

Section 7. The governor may proclaim martial law when the public safety requires it in case of rebellion or actual or eminent invasion. Martial law shall not continue for longer than twenty days without the approval of a majority of the members of the legislature in joint session.

New section.

Comment: This is a new section proposed by the subcommittee. It is intended to impose a constitutional limit on the authority of the governor to proclaim martial law. The first sentence could be revised: "The governor may, in the manner provided by the legislature, proclaim martial law when the public safety requires it in case of rebellion or actual or eminent invasion."

Section 8. All executive and administrative offices, agencies, and instrumentalities of the executive branch of the state government and their respective functions, powers and duties, shall be allocated by law among and within not more than twenty principal departments. The head of each principal department shall be a single executive unless otherwise provided by law. The governor with the consent of the senate shall appoint and remove the heads of all administrative departments. All other officers in the administrative service shall be appointed and may be removed as provided by law.

Each principal department shall be under the supervision of the governor and its head shall serve at the pleasure of the governor. If during a recess of the senate a vacancy occurs in any such office, the governor shall appoint some fit person to discharge the duties thereof until the next meeting of the senate, when he shall nominate some person to fill such

The governor shall nominate, and by and with the consent of the senate, appoint all officers whose offices are established by this constitution, or which may be created by law, and whose appointment or election is not otherwise provided for. If during a recess of the senate a vacancy occurs in any such office, the governor shall appoint some fit person to discharge the duties thereof until the next meeting of the senate, when he shall nominate some person to fill such office. If the office of secretary of state, state auditor, state treasurer, attorney general or superintendent of public instruction shall be vacated by death, resignation or otherwise, it shall be the duty of the governor to fill the same by appointment, and the appointee shall hold his office until his successor shall be elected and qualified.
[Article VII, Section 7]

See comment to Section 1 for list of present constitution officers, boards,

office. Only the governor shall make interim appointments.

commissions, departments and appointed officials replaced by this provision.

Comment: This section provides for an integrated executive branch of government with services allocated by the legislature among not more than 20 principal departments, organized by principal purpose. The heads of the 20 departments would be single executives, unless provided otherwise by law, and they would serve at the governor's pleasure.

The present constitution creates 17 constitutional elected officers, boards and commissions, departments and appointed officials listed in the comment to Section 1. In addition to the 17 agencies created by the constitution over 150 other agencies have been identified by the Commission on Reorganization of the Executive Branch of State Government.

The 1969 Legislature proposed the following amendment to the present constitution:

> All executive and administrative offices, boards, bureaus, commissions, agencies and instrumentalities of the executive department of state government and their respective functions, powers, and duties, except for the office of governor, lieutenant governor, secretary of the state, attorney general, state treasurer, state auditor, and superintendent of public instruction, shall be allocated by law among and within not more than twenty (20) departments by no later than July 1, 1973. Subsequently, all new powers or functions shall be assigned to departments, divisions, sections, or units in such manner as will tend to provide an orderly arrangement in the administrative organization of state government. Temporary commissions may be established by law and need not be allocated within a principal department.

Proposed Section 8 incorporates this amendment into the new constitution.

Five separate major studies of governmental organization in Montana have found similar defects in Montana's structure of government. However, few recommendations to correct these defects have been adopted. The adoption of the 20 department amendment by the voters in 1970 and its inclusion in any revision of the present constitution would be a major step toward executive reorganization.

Gubernatorial supervision of the executive branch is further strengthened by making the head of each department a single executive, unless otherwise provided by law, appointed and removed by the governor with the consent of the senate. This section appears to require senate approval of the removal of department heads. If this is not desired the sentence could be revised: "The governor with the consent of the senate shall appoint, and the governor may remove, the heads of all administrative departments." Each principal department is under the supervision of the governor and its head serves at the pleasure of the governor.

The Legislative Council noted in 1960:

> Regardless of constitutional language vesting the supreme executive power in the governor, the executive authority in Montana actually has been dispersed among more than 100 state agencies. Of the hundred odd agencies in the executive branch of government only three operating agencies are effectively responsible to the governor. Depending on the personal or political relationship between department heads or governing boards and commissions and the governor, and on the strength of the governor's personality, he may exert personal or political influence over these departments. However, the legal and constitutional framework of Montana's government does not force the governor to play an active and interested role in the administration of state government. The result is a kind of "government by option" insofar as the chief executive is concerned. Furthermore, when department heads or board members are appointed for fixed terms and cannot be removed except for cause, a governor is not naturally encouraged to participate in, or "interfere" with the activities of the agency. There have been rebellions of commissions in this state as a result of attempts by the governor to dictate policy to an agency governed by a board appointed wholly by him. One such incident could be enough to deter a governor from attempting to exercise leadership over other departments in the executive branch.
>
> While members of the Legislative Assembly have recognized that our state government is largely comprised of semi-autonomous and often irresponsive agencies, they often attribute the lack of legislative control over these departments to excessive powers of the executive branch. The powers exercised by the executive branch of Montana's state government are not excessive but they are often irresponsive and uncontrolled. There are no well-defined lines of responsibility within the executive branch itself and there is no balance of control exercised by the legislative branch.
>
> A responsible executive branch, properly headed by a governor vested with adequate authority, balanced by a system of independent controls such as the legislative post-audit, would increase the effectiveness of the legislature. A strengthening of the office of governor would not only strengthen the legislative branch by providing some insurance that its policies would be carried out, but would free it from the necessity of concerning itself with details that should be left to administrators. [Montana Legislative Council, The Organization and Administration of State Government, Report Number 3, November 1960, pp. 13 and 14.]

All other officers in the administrative service are appointed and removed as provided by law.

The provision for filling vacancies is taken from present Section 7. This provision could be clarified by substituting either of the following provisions for the present language:

> When the senate is not in session and a vacancy occurs in any office, appointment to which requires the confirmation of the senate, the governor may fill the office by granting a commission which shall, unless such appointment is confirmed, expire at the end of the next session of the senate; but the person so appointed shall not be eligible for another interim appointment to such office if the appointment shall have failed of confirmation by the senate. No person who has been nominated for appointment to any office and whose appointment has not received the consent of the senate shall be eligible to an interim appointment thereafter to such office. [Hawaii Constitution, Article IV, Section 6, p. V.]

> Department Heads. The head of each principal department shall be a single executive unless otherwise provided in this constitution or by law. The Governor shall appoint and may remove the heads of all administrative departments. All other officers in the administrative service shall be appointed and may be removed as provided by law. Each principal department shall be under the supervision of the Governor and its head shall serve at the pleasure of the Governor. [Report to National Governors' Conference by the Study Committee on Constitutional Revision and General Government Organization, July, 1968, p. 8.]

The state board of education is created in the present constitution by present Section 11, Article XI, which was assigned to the subcommittee on taxation. This subcommittee deferred making a recommendation on Section 11 until it could be harmonized with the recommendations of the executive and legislative subcommittees. The Legislative Council concluded that the section providing for the board of education should be repealed and replaced by statute.

The 1958 study, The Administration of Higher Education in Montana, by G. Homer Durham for the Montana Legislative Council recommended that the following amendment of Section 11, Article XI, be considered:

> The general control and supervision of the University of Montana shall be vested in a board of eight Regents, appointed by the Governor subject to the confirmation of the Senate, for eight year terms, each to commence the first day of July in successive years, according to law. The University is hereby constituted a body corporate and politic and its establishment, with all the rights, immunities, franchises and endowments heretofore granted or conferred are hereby perpetuated unto it under the control of said Regents."

The 1959 Legislative Assembly adopted the following amendment to Section 11 and presented it to the voters, but this amendment and two others were enjoined from the ballot by the supreme court because they had not been signed by the governor:

> The general control and supervision of the public, free, common schools shall be vested in a state board of education, whose powers and duties shall be prescribed and regulated by law. The said board shall consist of eight (8) members, appointed by the governor; subject to the confirmation of the Senate, under the regulations and restrictions to be provided by law. The general control and supervision of the University of Montana shall be vested in a board of regents, whose powers and duties shall be prescribed by law. The said board shall consist of eight (8) members, appointed by the governor subject to confirmation of the Senate, under the regulations and restrictions to be provided by law. [Montana Laws, 1959, chap. 191, p. 400.]

The Model Executive Article prepared by the National Governors' Conference provides for Board of Regents for Higher Education exclusive of the twenty departments and agencies otherwise provided for.

> Exclusive of the departments and agencies heretofore prescribed, there is established a Board of Regents for Higher Education, constituted according to law, except that one member shall serve as chairman at the pleasure of the Governor. A chancellor shall be appointed by the Board as its chief administrative officer. All units of higher education, beyond twelfth grade, shall compose a single system subject to the Board of Regents for Higher Education and legislative enactments. [Report to National Governors' Conference by the Study Committee on Constitutional Revision and General Government Organization, July, 1968, pp. 7,8.]

The Model Executive Article prepared by the National Governors' Conference provides: "Regulatory, quasi-judicial and temporary agencies established by law may, but need not, be allocated within a principal department."

The amendment proposed by the 1969 Legislature provides" "Temporary commissions may be established by law and need not be allocated within a principal department."

Section 9. The governor may make changes in the organization of the executive branch or in the assignment of functions among its units which he considers necessary for efficient administration. Where these changes require the force of law, they shall be set forth in executive orders. Such orders shall be submitted to the legislature, which shall have sixty days of a regular session, or a full session if of shorter duration, to express its disapproval. Unless modified or disapproved by resolution concurred in by a majority of the members of both houses, the orders shall

New section.

become effective at a date thereafter
to be designated by the governor.

Comment: This new section gives the governor power to reorganize the executive branch through executive orders which would take effect automatically in the absence of a legislative veto, concurred in by a majority of the members of both houses. The new section is taken from the Model Executive Article proposed by the National Governors' Conference. The Model State Constitution contains a similar provision with the following comment:

> In keeping with the concept of the governor as leader of state administration, however, the chief executive is also granted broad powers which permit him to take the initiative in administrative reorganization. He has broad powers to order changes in the organization of government but, when reorganization desired by the governor requires changes in law, the participation of the legislature is required to effectuate--the changes may be set forth in executive orders to become effective 60 days after submission to the legislature unless they are specifically modified or disapproved by resolution concurred in by a majority of all the members.

Alaska is the only state with a comparable provision in its constitution. Article III, Section 23, of the Alaska Constitution provides:

> The governor may make changes in the organization of the executive branch or in the assignment of functions among its units which he considers necessary for efficient administration. Where these changes require the force of law, they shall be set forth in executive orders. The legislature shall have 60 days of a regular session, or a full session if of shorter duration, to disapprove these executive orders. Unless disapproved by resolution, concurred in by a majority of the members in joint session, these orders become effective at a date thereafter to be designated by the governor.

A few states have followed the direction of the Federal Reorganization Act of 1949, in lieu of taking the constitutional route, by providing for statutory delegation of reorganization powers to the governor.

Arguments in favor of a constitutional provision that vests substantially all powers of reorganization in the legislature are: (1) the structure of government is properly a legislative responsibility so the legislature should have the principal role in framing departmental structure to assure that the policies of government are being executed and that the desired results are obtained; (2) existing provisions have achieved the objective of preventing proliferation of governmental units; and (3) experience shows that the executive and legislative branches can work cooperatively to reorganize when the constitutional power is vested in the legislature.

Arguments in favor of giving the governor constitutional power to initiate reorganization subject to legislative veto are: (1) the governor is better equipped than the legislature to oversee administration and since he is primarily accountable for it, he should have the authority, subject to legislative veto, to reorganize the administrative units under his direction; (2) the legislature would retain effective power over reorganization since no reorganization could be made without its consent; and (3) the power would assist the executive branch in carrying out efficiently the administrative functions assigned to it.

Section 10. The governor shall have the power to grant reprieves, commutations and pardons after conviction and may suspend and remit fines and forfeitures subject to such procedures as may be prescribed by law.

The governor shall have the power to grant pardons, absolute or conditional, and to remit fines and forfeitures, and to grant commutation of punishments and respites after conviction and judgment for any offenses committed against the criminal laws of the state; Provided, however, that before granting pardons, remitting fines and forfeitures, or commuting punishments, the governor shall be advised concerning the same and that such action has been approved by a board, or a majority thereof, who shall be known as the board of pardons. The legislative assembly shall by law prescribe for the appointment and composition of said board of pardons, its powers and duties; and regulate the proceedings thereof
[Article VII, Section 9]

Comment: This section is a revision of present Section 9, based on the Section 8 of the Model Executive Article prepared by the National Governors' Conference. The present section makes the governor's authority subject to a constitutional board. The revision eliminates the board and makes the governor's authority subject to such procedures as may be prescribed by law. This will leave room for creation of such expert or professional boards or agencies to deal with matters of clemency as may be appropriate.

Section 11. The governor shall at the beginning of each legislative session, and may at other times, give the legislature information and recommend measures he considers necessary. The governor shall submit to the legislature at a time fixed by law a budget for the ensuing fiscal period setting forth in detail, for all operating funds, the proposed expenditures and estimated revenue of the state.

The governor may require information in writing from the officers of the executive department upon any subject relating to the duties of their respective offices, which information shall be given upon oath whenever so required; he may also require information in writing, at any time, under oath, from all officers and managers of state institutions, and may, at any time he deems it necessary, appoint a committee to investigate and report

to him upon the condition of any executive office or state institution. The governor shall at the beginning of each session, and from time to time, by message, give to the legislative assembly information of the condition of the state, and shall recommend such measures as he shall deem expedient. He shall also send to the legislative assembly a statement with vouchers of the expenditures of all moneys belonging to the state and paid out by him. He shall also at the beginning of each session present estimates of the amount of money required to be raised by taxation for all purposes of the state. [Article VII, Section 10]

Comment: The Legislative Council recommended that present section 10 be revised extensively. This section is a revision of present Section 10. The first sentence is from Section 9 and the second sentence from Section 14 of the Model Executive Article prepared by the National Governors' Conference. The present statutory responsibility of the governor to submit an executive budget to the legislature is given constitutional status. The preparation of the budget enables the governor to develop a comprehensive fiscal program for each fiscal period.

Recognizing this executive responsibility, the new section requires the chief executive to develop not only proposals for an expenditure program, but also estimated revenue of the state.

With such requirements the legislature is in a position to evaluate the executive's comprehensive fiscal plan, to increase or decrease items and to strike out or add items. These broad powers are balanced by the provision in proposed Section 14 that the governor may veto, in whole or in part, items in appropriation bills as passed by the legislature.

Section 12. Whenever the governor considers it in the public interest, he may convene the legislature, either house, or the two houses in joint session. At the written request of two-thirds of the members to which each house is entitled, the presiding officers of both houses shall convene in special session. He may on extraordinary occasions convene the legislative assembly by proclamation, stating the purposes for which it is convened, but when so convened, it shall have no power to legislate on any subjects other than those specified in the proclamation, or which may be recommended by the governor, but may provide for the expenses of the session and other matters incidental thereto. He may also by proclamation convene the senate in

extraordinary session for the transaction of executive business.
[Article VII, Section 11]

Comment: The governor under the present Section 11 exercises two principal powers which affect legislative sessions. They are: (1) convening of the legislature in special session; (2) determining the agenda of a special session. The suggested revision retains the power of the governor to call special sessions but shares it with the legislature and eliminates the power of the governor to limit the special session to subjects specified by the governor.

The Legislative Council concluded that the present Section 11 was not adequate and should be redrafted to allow the legislature to call itself into session.

State constitutions make provision for special sessions in order to meet emergencies, to allow for senate confirmation of appointments and removals, to initiate impeachment proceedings, and to finish legislative business not completed or dealt with during the regular legislative session. In the great majority of states, including Montana, the practice is to vest in the governor alone the power to convene the legislature in special session. However, in eight states the governor must call a special session upon petition by a constitutionally specified number of legislators, and in another six states the legislature may convene in special session under its own authority.

Customarily, in the call for a special session, the governor designates particular matters to be considered by the legislature. The special session is restricted to these concerns in approximately one-half of the states; in the remainder, the legislature may initiate and consider additional business.

Proposed Section 7, Article IV contains a similar but inconsistent provision for convening special sessions of the legislature. The provisions should be identical if they are to appear in both articles. See comment Article IV, Section 7.

Constitution drafters face the problem of which of the powers of the chief executive should be placed in the executive article and which in articles elsewhere. For example, does this section on the power of the governor to convene special sessions of the legislature and the following two sections on the executive veto properly belong in the legislative or executive article?

The Model Executive Article suggests that these provisions be placed in the legislative article. The present constitution places the governor's power to convene special sessions in the executive article (Article VII, Section 11) and the veto power in both the executive and legislative articles (Article VII, Sections 12 and 13; Article VI, Section 40).

Section 13. Every bill passed by the legislative assembly, except bills proposing amendments to the Montana Constitution and bills ratifying proposed amendments to the United States Constitution which may not be vetoed by the governor, shall, before it becomes a law, be presented to the governor. He shall either sign it, whereupon it shall become a law, or he shall return it with his objections to the house in which it originated, which house shall enter the objections at large upon its journal and proceed to reconsider the bill. If two-thirds of the members present agree to repass the same, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if repassed by two-thirds of the members present in that house it shall become a law notwithstanding the objections of the governor. If any bill shall not be returned by the governor within five days (Sunday excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the legislative assembly shall by their adjournment prevent its return. Within twenty-five days after the adjournment of the legislature, the governor shall consider all bills not disposed of prior to adjournment. He shall either sign such bills into law; or if he fails to approve any bill, he shall return it with his objections to the presiding official of the house in which it originated. The legislature, as provided in Section 12, may reconvene itself to reconsider any bills so returned by the governor.

Every bill passed by the legislative assembly shall, before it becomes a law, be presented to the governor. If he approve, he shall sign it, and thereupon it shall become a law; but if he do not approve, he shall return it with his objections to the house in which it originated, which house shall enter the objections at large upon its journal and proceed to reconsider the bill. If then two-thirds of the members present agree to pass the same, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two-thirds of the members present in that house it shall become a law notwithstanding the objections of the governor. In all such cases the vote of each house shall be determined by yeas and nays, to be entered on the journal. If any bill shall not be returned by the governor within five days (Sunday excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the legislative assembly shall by their adjournment prevent its return, in which case it shall not become a law without the approval of the governor. No bill shall become a law after the final adjournment of the legislative assembly unless approved by the governor within fifteen days after such adjournment. In case the governor shall fail to approve of any bill after the final adjournment of the legislative assembly it shall be filed, with his objections, in the office of the secretary of state.
[Article VII, Section 12]

Every order, resolution or vote, in which the concurrence of both houses may be necessary, except on the question of adjournment, or relating solely to the transaction of the business of the two houses, shall be presented to the governor, and before it shall take effect be approved by him, or, being disapproved,

be repassed by two-thirds of both houses, as prescribed in the case of a bill. [Transfer Article VI, Section 40]

Comment: This section is a revision of the present executive veto power in present Section 12 of Article VI and Section 40 of Article VI. The Legislative Council recommended that these two sections be clarified and revised to specifically remove the governor from the amendment process for both state and federal constitutions.

Detailed specifications for the amending process are contained in Article XIX, Section 9 of the present constitution and, as in other jurisdictions, there is no reference to participation by the governor in the process. It has been understood with respect to the United States Constitution since 1798 [Hollingsworth v. Virginia, 3 Dall. 378 (1798)] that the process of constitutional amendment is a distinctive "constituent" function shared by legislature and voters, and that the executive has no function with respect to it; and, except for Montana, the states observe the same principle.

Montana's practice as required by a recent court decision is distinctive in that legislative proposals of constitutional amendments must be submitted to the governor for signature or veto. Since amendments must be approved by a two-thirds vote in each house initially, and this majority would override a gubernatorial veto, it is not clear why the governor should have this role.

However, plaintiffs persuaded the Montana Supreme Court in 1960 that the provision in the legislative article of the constitution (Article V, Section 40) requiring that "every order, resolution or vote, in which the concurrence of both houses may be necessary. . .shall be presented to the governor" applied not only to ordinary legislative matters, but to the amendment process as well [State ex rel. Livingstone v. Murray. 354 Pac 2d, 552, 556 (1960)].

In practice joint resolutions ratifying proposed amendments to the United States Constitution are also submitted to the governor for his signature. There is clear precedent against the authority of a governor to veto ratification of United States Constitutional amendments by a state legislature in Hollingsworth v. Virginia.

The first gubernatorial veto of a proposed amendment occurred in 1969, although three proposed amendments were invalidated in 1959 because they were not presented to the governor for his approval and an amendment defeated by the voters in 1942 had never been signed by the governor. During the 1969 session Governor Anderson vetoed HB 400, a new section to be added to Article XIX making lawful the conduct of certain games of chance by certain non-profit organizations and prescribing restrictions. The legislature did not repass the amendment probably because of the introduction of the popular twenty-department amendment in the extraordinary session.

The subcommittee concurs in the Legislative Council recommendation that the governor be specifically removed from the amendment process for both the state and federal constitution.

The time available to the governor for reviewing legislation affects his ability to take informed action on each measure passed. The governor presently has five days to consider bills presented to him five or more days (Sundays excepted) before adjournment of the legislature. Bills which before adjournment are neither signed nor returned by the governor within this period become law.

The governor presently has 15 days to consider bills presented to him less than five days before adjournment or presented after adjournment. Such bills die unless approved by the governor within 15 days after adjournment. This is a pocket veto. The use of the pocket veto appears to be on the decline. Only 18 states presently provide for the pocket veto. The principal objection to this practice is that it does not require the governor to state his objections and therefore obscures gubernatorial responsibilities for killing legislation.

The proposed section retains the five-day limit during the session and increases the post-session limit from 15 to 25 days. Twenty-two states have limits of five days or less. Some observers of state affairs suggest that the period for gubernatorial consideration should be increased. As the complexity and volume of legislation grows, extended periods are needed, it is argued, to enable the governor to consult with his administrative department or to seek legal research and advice from the attorney general. Furthermore, members of the public would have additional opportunity to express their opinions.

The proposed section eliminates the pocket veto by requiring the governor after the adjournment of the legislature to return bills with his objections to the presiding official of the house in which it originated. The legislature, as provided in proposed Section 12, may reconvene itself to reconsider any bill returned by the governor.

The present and proposed section require a two-thirds majority of members present to repass a vetoed bill.

All states, except North Carolina, which does not provide for the executive veto, have constitutional provisions which specify the requirements for overriding the veto. Twenty-three states require a two-thirds vote of the elected membership to override, while 15 others, including Montana, stipulate two-thirds of the legislators present. In the remaining states, the veto may be overridden by a three-fifths or simple majority of the elected members or by three-fifths of the legislative quorum present.

The comments under Section 12 regarding the appropriate location of sections involving the governor's powers to convene special sessions of the legislature and veto bills apply here.

Section 14. The governor may strike out or reduce items in appropriation bills passed by the legislature and the procedure in such cases shall be the same as in the case of the disapproval of an entire bill by the governor.

The governor shall have power to disapprove of any item or items of any bill making appropriations of money, embracing distinct items, and the part or parts approved shall become a law, and the item or items disapproved shall be void, unless enacted in the manner following: If the legislative assembly be in session he shall within five days transmit to the house in which the bill originated, a copy of the item or items thereof disapproved, together with his objections thereto, and the items objected to shall be separately reconsidered, and each item shall then take the same course as is prescribed for the passage of bills over the executive veto.
[Article VII, Section 13]

Comment: This section provides a partial veto over appropriation bills. The proposed section is a revision of present Section 13 which gives the governor the power to disapprove item or items in appropriation bills. The proposed section grants the governor the additional power to reduce items in appropriation bills. The Legislative Council noted that the power to reduce items vests additional discretion in the governor and additional flexibility. The proposed section is taken from the Model State Constitution, Article IV, Section 16.

Sections Deleted

The legislative assembly shall provide for a state examiner, who shall be appointed by the governor and confirmed by the senate. His duty shall be to examine the accounts of state treasurer, supreme court clerks, district court clerks, and all county treasurers and treasurers of such other public institutions as may be prescribed by law, and shall perform such other duties as the legislative assembly may prescribe. He shall report at least once a year and oftener if required to such officers as may be designated by the legislative assembly. His compensation shall be fixed by law.
[Article VII, Section 8]

Comment: The Legislative Council concluded that the state examiner should not be a constitutional officer and that this section should be repealed. The subcommittee concurs. See comment under proposed Sections 1 and 8

relating to an integrated executive department for reasons.

> The first legislative assembly shall provide a seal for the state, which shall be kept by the secretary of the state and used by him officially, and known as the great seal of the state of Montana.
> [Article VII, Section 17]

Comment: This section is statutory and the Legislative Council concluded it was unnecessary and should be repealed. The subcommittee concurs.

> All grants and commissions shall be in the name and by the authority of the state of Montana, sealed with the great seal of the state, signed by the governor, and countersigned by the secretary of state.
> [Article VII, Section 18]

Comment: This section is statutory. Proposed Section 8 provides for the appointment of all state executive and administrative officers. If a provision for commissions is desired the following sentence might be added to Section 8. "The governor shall commission all officers of the state." The Legislative Council said this section may be unnecessary. The subcommittee recommends it be deleted.

> An account shall be kept by the officers of the executive department, and of all public institutions of the state of all moneys received by them, severally from all sources, and for every service performed, and of all moneys disbursed by them severally, and a semi-annual report thereof shall be made to the governor, under oath; they shall also, at least twenty days preceding each regular session of the legislative assembly, make full and complete reports of their official transactions to the governor, who shall transmit the same to the legislative assembly.
> [Article VII, Section 19]

Comment: The subcommittee concurs with the Legislative Council conclusion that this section is statutory rather than constitutional and should be repealed. Proposed Section 8 places all principal departments under the supervision of the governor and proposed Section 11 requires the

governor to submit an executive budget to the legislature.

> The governor, secretary of state and attorney general shall constitute a board of state prison commissioners, which board shall have such supervision of all matters connected with the state prisons as may be prescribed by law. They shall constitute a board of examiners, with power to examine all claims against the state, except salaries or compensation of officers fixed by law, and perform such other duties as may be prescribed by law. And no claim against the state, except for salaries and compensation of officers fixed by law, shall be passed upon by the legislative assembly without first having been considered and acted upon by said board. The legislative assembly may provide for the temporary suspension of the state treasurer by the governor, when the board of examiners deem such action necessary for the protection of the moneys of the state. [Article VII, Section 20]

Comment: A proposed amendment which would have deleted the constitutional reference to the Board of State Prison Commissioners was defeated in 1920 by a vote of 51,072 for and 72,870 against. A second proposed amendment in 1959 which would have accomplished the same purpose did not appear on the ballot because of State ex rel. Livingstone v. Murray, 137 M 557, which held that a second proposed amendment was invalid because it had not been presented to the governor. This amendment had not been presented to the to the governor and was withheld from the ballot in 1960. The Board of State Prison Commissioners have no duties prescribed by law and, therefore, no duties to perform.

The operation of the Board of Examiners has been commented on time and time again by various Montana governmental study groups:

> The state board of examiners is composed of the governor, secretary of state, and sttorney general. This board has much power and many duties. . . .They must examine all claims against the state except salaries or compensation fixed by law. As these claims amount to twelve or fourteen hundred per month, it is out of the question for the board to personally audit these bills, and this work is delegated to a clerk who has neither the time nor the facilities for ascertaining whether or not the money is being judiciously expended. In order to relieve the state board of examiners of many duties which they are physically unable to perform and leave them more time to

> attend to the duties of the office to which each has been elected, a constitutional amendment has been submitted to be voted on at the next election. If this amendment carries, the next legislative assembly will then be able to create a state board of administration who will then assume all of the duties now imposed on the state board of examiners, and the business of the state can be handled in a more efficient and business-like way. [Report of the State Efficiency and Trade Commission to Governor S. V. Stewart, November 1, 1919, p. 7]

Twenty-two years later a legislative committee expressed a similar opinion:

> In Montana the pre-audit of claims is cumbersome and is duplicated by different departments.
>
> Signatures of at least two members of the board of examiners are required by all claims before being presented for payment. This requirement is merely a gesture, since in practice a rubber stamp is used for the purpose in the office of the board of examiners. The board of examiners' procedure is another step through which claims must pass before being presented for payment. It serves no purpose other than slowing up the payment of claims.
>
> One of the specific recommendations of this committee is as follows: We further recommend. . .the appointment by the governor and under his direct supervision a controller to have charge of all fiscal affairs of the state of Montana. [House Journal of the Twenty-seventh Legislative Assembly, 1941, p. 401 (Report of Joint Committee on State Governmental Organization).]

Griffenhagen and Associates recommended in 1942 to the Governor's Committee on Reorganization and Economy that a department of finance, headed by a director of finance appointed by the governor, undertake, among other things, the pre-audit of expenditures being conducted by the Board of Examiners. This recommendation was later passed on to the Twenty-eighth Legislative Assembly in the following form:

> The plan of organization should provide for the coordination of all the administrative functions in the financial management of the state's affairs through a single agency under a single executive officer, to permit the integration of financial procedures. [State of Montana Reorganization Report, January 4, 1943, p. 93.]

Following the recommendations of the 1960 Legislative Council report most functions then performed by the board of examiners were removed from that office. The subcommittee believes the powers granted the state board of examiners in this section are statutory and recommends that this section be deleted for the reasons set forth in the comments to Sections 1 and 8.

REVISION OF JUDICIAL ARTICLE
[Article VI in Proposed Constitution; Article VIII in Present Constitution]

COMPARISON OF PRESENT ARTICLE VIII WITH PROPOSED ARTICLE II
AND RECOMMENDATIONS OF LEGISLATIVE COUNCIL

Present Article	Legis. Council Recommendation	Subcommittee Recommendation	Location in Proposed Article
VIII, Sec. 1	revise	revise	Section 1
2	adequate	revise	2,4
3	adequate	retain	3
4	repeal	delete	--
5	revise	revise	5
6	adequate	revise	10
7	adequate	revise	5
8	revise	revise	5,10
9	revise	revise	4
10	adequate	revise	10
11	revise	revise	6
12	revise	revise	7
13	repeal	revise	7
14	adequate	revise	7
15	adequate, unnec.	revise	9
16	adequate	revise	10
17	adequate	delete	--
18	repeal	revise	7
19	repeal	delete	--
20	repeal	delete	--
21	repeal	delete	--
22	repeal	delete	--
23	repeal	delete	--
24	repeal	delete	--
25	adequate	retain	9
26	adequate	revise	9
27	adequate	retain	9
28	adequate	retain	9
29	revise	revise	11
30	revise	revise	11
31	adequate	retain	11
32	repeal	delete	--
33	adequate	revise	10

Present Article	Legis. Council Recommendation	Subcommittee Recommendation	Location in Proposed Article
Sec. 34	revise	revise	Section 10,7
35	adequate	revise	10
36	repeal	delete	--
37	adequate	delete	--
--	---	new	8

Proposed Constitution	Present Constitution
Article VI THE JUDICIARY	Article VIII JUDICIAL DEPARTMENTS
Section 1. The judicial power of the state shall be vested in the senate sitting as a court of impeachment, in a supreme court and district courts.	The judicial power of the state shall be vested in the senate sitting as a court of impeachment, in a supreme court, district courts, justices of the peace, and such other inferior courts as the legislative assembly may establist in any incorporated city or town. [Article VIII, Section 1]

Comment: This section is the same as the present section of Article VIII, except that all reference to justices of the peace and other inferior courts has been eliminated. This section as revised establishes a two-level court system, as opposed to the present three-level system. If a three-level system is desired, this may be provided for by deleting "and" before district courts and adding after district courts "and such inferior courts as may be provided for by law."

Section 2. The supreme court, except as otherwise provided in this constitution, shall have appellate jurisdiction only, which shall be co-extensive with the state, under such regulations and limitations as may be prescribed by law.	The supreme court, except as otherwise provided in this constitution, shall have appellate jurisdiction only, which shall be co-extensive with the state, and shall have a general supervisory control over all inferior courts, under such regulations and limitations as may be prescribed by law. [Article VIII, Section 2]

Comment: Present Section 2 has been separated into Sections 2 and 4 in the judicial subcommittee draft. References to the supervisory control of the supreme court have been placed in proposed Section 4. Proposed Sections 2 and 3 will provide the appellate jurisdiction of the supreme court and Section 4 will provide the general supervisory and administrative powers of the supreme court (see also proposed Section 4).

Section 3. The appellate jurisdiction of the supreme court shall extend to all cases at law in equity, subject, however, to such limitations and regulations as may be prescribed by law. Said court shall have power in its discretion to issue and to hear and determine writs of habeas corpus, mandamus, quo warranto, certiorari, prohibition, injunction, and such other original and remedial writs as may be	No change from Article VIII, Section 4.

necessary or proper to the complete exercise of its appellate jurisdiction. When a jury is required in the supreme court to determine an issue of fact, said court shall have power to summon such jury in such manner as may be provided by law. Each of the justices of the supreme court shall have power to issue writs of habeas corpus to any part of the state, upon petition by or on behalf of any person held in actual custody, and may make such writs returnable before himself, or the supreme court, or before any district court of the state, or any judge thereof; and such writs may be heard and determined by the justice or court, or judge, before whom they are made returnable. Each of the justices of the supreme court may also issue and hear and determine writs of certiorari in proceedings for contempt in the district court, and such other writs as he may be authorized by law to issue.

Section 4. The supreme court shall have a general supervisory and administrative control over all inferior courts, under such regulations and limitations as may be prescribed by law. The legislature in its discretion may create an office of court administration to assist the supreme court in its administrative functions. The clerk of the supreme court shall be selected as provided by law and his term and compensation shall be fixed by law and his duties shall be prescribed by law and by rules of the supreme court.

The supreme court, except as otherwise provided in this constitution, shall have appellate jurisdiction only, which shall be co-extensive with the state, and shall have a general supervisory control over all inferior courts, under such regulations and limitations as may be prescribed by law.
[Article VIII, Section 2]

There shall be a clerk of the supreme court, who shall hold his office for the term of six years, except that the clerk first elected shall hold his office only until the general election in the year one thousand eight hundred ninety-two (1892), and until his successor is elected and qualified He shall be elected by the electors at large of the state, and his compensation shall be fixed by law, and his duties prescribed by law, and by the rules of the supreme court.
[Article VIII, Section 9]

Comment: This is a new section. It combines the supervisory powers of the supreme court from present section 2 with a new provision for "administrative control" which has been added to facilitate another of the general purposes of this revision; namely, to provide for a system of administration within the court system, with well defined lines of administrative control running from each branch or division of each court through a central administrative authority, culminating finally in the supreme court. This provision does not expand the present authority of the supreme court over the lower courts, but will, in conjunction with other sections, establish a constitutional system of judicial administration.

Also included in this section is a revision of present Section 9, which allows for the appointment of the clerk of the supreme court, since the clerk is the administrative office of the supreme court (see also proposed Section 2).

Section 5. The supreme court shall consist of a chief justice and four (4) associate justices, and the legislative assembly shall have the power to increase the number of associate justices to no more than six (6). A majority of justices shall be necessary to form a quorum or pronounce a decision, but one or more justice may adjourn the court from day to day, or to a day certain. In case any justice of the supreme court shall be in any way disqualified to sit in a cause brought before such court, the remaining justice or justices shall have power to call on one or more of the district judges of this state as in the particular case may be necessary to constitute the full number of justices of which the said court shall then be composed, to sit with them in the hearing of said cause. In all cases where a district judge is invited to sit and does sit as by this section provided, the decision and opinion of such district judge shall have the same force and effect in any case heard before the court as if regularly participated in by a justice of the supreme court. The terms of office of the chief justice and other justices of the supreme court, except as in the constitution otherwise provided, shall be six years. The chief justice shall preside at all sessions

The supreme court shall consist of three justices, a majority of whom shall be necessary to form a quorum of pronounce a decision, but one or more of said justices may adjourn the court from day to day, or to a day certain and the legislative assembly shall have the power to increase the number of said justices to not less nor more than five. In case any justice of the supreme court shall be in any way disqualified to sit in a cause brought before such court, the remaining justice or justices shall have power to call on one or more of the district judges of this state as in the particular case may be necessary to constitute the full number of justices of which the said court shall then be composed, to sit with them in the hearing of said cause In all cases where a district judge is invited to sit and does sit as by this section provided, the decision and opinion of such district judge shall have the same force and effect in any cause heard before the court as if regularly participated in by a justice of the supreme court.
[Article VIII, Section 5]

The term of office of the justices of the supreme court, except as in this constitution otherwise provided, shall be six years.
[Article VIII, Section 7]

of the supreme court, and in case of his absence shall appoint an associate justice to preside in his stead.

There shall be elected at the first general election, provided for by this constitution, one chief justice and two associate justices of the supreme court. At said first election the chief justice shall be elected to hold his office until the general election in the year one thousand eight hundred ninety-two (1892), and one of the associate justices to hold office until the general election in the year one thousand eight hundred ninety-four (1894), and the other associate justice to hold his office until the general election in the year one thousand eight hundred ninety-six (1896), and each shall hold until his successor is elected and qualified. The terms of office of said justices, and which one shall be chief justice, shall at the first and subsequent elections be designated by ballot. After said first election one chief justice or one associate justice shall be elected at the general election every two years, commencing in the year one thousand eight hundred ninety-two (1892), and if the legislative assembly shall increase the number of justices to five, the first terms of office of such additional justices shall be fixed by law in such manner that at least one of the five justices shall be elected every two years. The chief justice shall preside at all sessions of the supreme court, and in case of his absence, the associate justice having the shortest term to serve shall preside in his stead
[Article VIII, Section 8]

Comment: The first four sentences of this section are the same as present Section 5, except that the first sentence of the present section has been revised to set the number of justices at 5 with possible future expansion to 7, in contrast to the present Section 5, which originally set the number of justices at 3 but permitted expansion to the present number of five. The last two sentences are a substitute for present Sections 7 and 8. Obsolete language referring to initial elections of supreme court judges is deleted and the provision for the appointment of the acting chief justice is a change from the present system which requires that the justice with the shortest time left in office be acting justice. This change would seem to be a slight improvement from an administrative standpoint.

Section 6. The district courts shall have original jurisdiction of all justiciable matters, both civil and criminal, including jurisdiction to issue original and remedial writs. Their process shall extend to all parts of the state, and may be issued and served on legal holidays and non-judicial days. Jurisdiction to review administrative action shall be as provided by law. They shall have power of naturalization, and to issue papers therefor, in all cases where they are authorized to do so by the laws of the United States

The district courts shall have original jurisdiction in all cases at law and in equity, including all cases which involve the title or right of possession of real property, or the legality of any tax, impost, assessment, toll or municipal fine, and in all cases in which the debt, damage, claim or demand, exclusive of interest, or the value of the property in controversy exceeds fifty dollars; and in all criminal cases amounting to felony, and in all cases of misdemeanor not otherwise provided for; of actions to prevent or abate a nuisance; of all matters of probate; of actions of divorce and for annulment of marriage, and for all such special actions and proceedings as are not otherwise provided for. And said courts shall have the power of naturalization, and to issue papers therefor, in all cases where they are authorized so to do by the laws of the United States. They shall have appellate jurisdiction in such cases arising in justices and other inferior courts in their respective districts as may be prescribed by law and consistent with this constitution Their process shall extend to all parts of the state, provided that all actions for the recovery of, the possession of, quieting the title to, or for the enforcement of liens upon real property, shall be commenced in the county in which the real property, or any part thereof, affected by such action or actions, is situated Said courts and the judges thereof shall have power also to issue, hear and determine writs of mandamus, quo warranto, certiorari, prohibition, injunction and other original and remedial writs, and also all writs of habeas corpus on petition by, or on behalf of, any person held in actual custody in their respective districts Injunctions, writs of prohibition and habeas corpus, may be issued and served on legal holidays and non-judicial days. [Article VIII, Section 11]

Comment: This is a substitute for the present Section 11 and has been completely rewritten to carry out the intention of this proposal to place all trial jurisdiction in the hands of the district courts and abolish inferior courts and their jurisdiction. The enumeration of many specific matters has been compressed into the grant of jurisdiction over all justiciable matters, both civil and criminal. The enumeration of specific writs these courts are empowered to issue has again been brought together in the general power "to issue original and remedial writs." It is the intention of these provisions to place complete and plenary power in the district courts over all matters with which district courts deal now or may deal in the future. While no specific broadening of jurisdiction, beyond the assumption of that of the interior courts, is contemplated, it is hoped that this provision is sufficiently complete to leave no gaps in the jurisdiction of these courts. The reference to naturalization has been carried forward from present Section 11 because such specific reference appears necessary to exercise this essentially federal power.

Section 7. The state shall be divided into judicial districts and shall have such numbers of district judges therein as may be provided by law. No change in the number or boundaries of districts, or diminution of the number of judges, shall have the effect of removing a judge from office. Such change in districts or the number of judges therein shall not take place more frequently than every four years. The terms of district court judges shall be four years. Any judge of a district court may hold court for any other district court when requested to do so by a district judge of the other district. There shall be a clerk of the district court who shall be selected as provided by law and whose term, duties, and compensation shall be fixed by law.

The state shall be divided into judicial districts, in each of which there shall be elected by the electors thereof one judge of the district court, whose term of office shall be four years, except that the district judges first elected shall hold their offices only until the general election in the year one thousand eight hundred and ninety-two (1892), and until their successors are elected and qualified. Any judge of the district court may hold court for any other district judge, and shall do so when required by law.
[Article VIII, Section 12]

Until otherwise provided by law judicial districts of the state shall be constituted as follows: First district, Lewis and Clark county; second district, Silver Bow county; third district, Deer Lodge county; fourth district, Missoula county; fifth district, Beaverhead, Jefferson and Madison counties; sixth district, Gallatin, Park and Meagher counties; seventh district, Yellowstone, Custer and Dawson counties; eighth district, Choteau, Cascade and Fergus counties
[Article VIII, Section 14]

There shall be a clerk of the district court in each county, who shall be elected

by the electors of his county. The clerk shall be elected at the same time and for the same term as the district judge. The duties and compensation of said clerk shall be as provided by law. [Article VIII, Section 18]

Comment: This section is a substitute for present Sections 12, 13, 14, and 18. Obsolete language is deleted from these sections and the new section provided for a clerk of the district court selected as provided by law. The Legislative Council suggested that present Section 18, which provided for election of clerks in each county, be deleted because county officials should not be constitutional.

Section 8. The judge or judges of each district, with the approval of the chief justice of the supreme court, may create one or more magistrates' offices. Magistrates shall be assigned to such matters and cases as shall be prescribed by law, except criminal cases amounting to felonies in which magistrates may act only as committing and examining courts. Magistrates shall exercise the jurisdiction of district courts in all matters and cases assigned to them and shall serve at the pleasure of the appointing judge or judges. Compensation of magistrates shall be fixed by the appointing judge or judges.

New section

Comment: This section provides for a two-level system of courts with magistrates exercising a limited portion of the district court's jurisdiction. It does not provide for a system of inferior courts, which would be a three-level court system. Even if the legislature is given the discretion in Section 1 to provide for inferior courts, this provision for magistrates could be retained.

This section is entirely new and is intended to provide flexibility in those situations where difficulties will be created by the adsorption of lower court jurisdiction into the district court. It is intended to permit the appointment of an officer who will exercise a limited portion of the district court's jurisdiction as an integral part of the district court, in a position somewhat similar to a master or referee under our present civil rules. It sets up a system by which part-time or full-time judicial officers may be provided to handle part of the criminal case load in the courts.

Magistrates may be appointed under this section to exercise jurisdiction in individual cases, in particular types and classes of cases, or to

have complete jurisdiction over all the types of cases permitted by this section in a particular territory.

The section contemplates that the permission of the chief justice of the supreme court would be necessary for the original creation of the position of magistrate, with a careful delineation of the class of cases and the territorial bounds within which he shall act. It may be that some of these appointments may be of a permanent nature and substantially conform to the duties now exercised in particular placed by justices of the peace or police judges. Magistrates will, however, be members of the bar exercising district court judicial functions and will be responsible to the appointing judge or judges of the district and the chief justice of the supreme court and be an integral part of the judicial system

The judicial subcommittee did not agree on language of the last sentence and referred this section to the Commission. Alternative language considered: "Compensation of magistrates shall be fixed by the appointing judge or judges as provided by law."

Section 9. The supreme court and district courts shall be courts of record. There shall be but one form of civil action, and law and equity may be administered in the same action. All laws and court rules relating to courts shall be general and of uniform operation throughout the state; and the organization, jurisdiction, powers, proceedings, and practice of all courts shall be uniform in the same class or grade of case. The style of all process shall be "The State of Montana", and all prosecutions shall be conducted in the name and by the authority of the same. Appeals shall be allowed from decisions of district courts and magistrates to the supreme court, under such regulations as may be prescribed by law.	No change from Article VIII, Section 25. No change from Article VIII, Section 28 All laws relating to courts shall be general and of uniform operation throughout the state; and the organization, jurisdiction, powers, proceedings, and practice of all courts of the same class or grade, so far as regulated by law, shall be uniform. [Article VIII, Section 26] No change from Article VIII, Section 27. Writs of error and appeals shall be allowed from the decisions of said district courts to the supreme court under such regulations as may be prescribed by law. [Article VIII, Section 15]

Comment: The first sentence is the same as present Section 25. The second sentence is the same as present Section 28. The third sentence is a revision of the present Section 26. The present provision requires that organization, jurisdiction, powers, proceedings, and practice "of all courts of the same class or grade" be uniform. The revision requires that organization, jurisdiction, powers, proceedings, and practice of all courts shall be uniform in "the same class or grade of case." The uniformity in the proposal applies to the case, not the court.

Section 10. The legislature may provide for the election or other method of selection of justices and judges, and for their censure, suspension, removal or retirement by methods alternative to or in addition to those provided by Article V, Section 17, of this constitution or any other provision thereof. A vacancy in the office of chief justice or associate justice of the supreme court shall be filled by appointment by the governor. No person shall be eligible to the office of justice of the supreme court, judge of a district court, or district court magistrate, unless he shall have been admitted to the practice of law in the supreme court of Montana, and be a citizen of the United States except that a district court magistrate need not have been admitted to the practice of law if a judge of the district for which the appointment is made shall certify that no person who had been admitted to the practice of law in the supreme court of Montana is available and shall file such certification with the supreme court of Montana. No person shall be eligible to the office of the justice of the supreme court unless he shall be at least thirty years of age and shall have resided in the state at least two years next preceding his appointment or selection as provided by law. No person shall be eligible to the office of district judge or district court magistrate unless he shall be at least twenty-five years of age and have resided within the state at least one year next preceding his appointment or selection as provided by law. District judges and magistrates need not be residents of the district for which they are chosen at the time of their selection as provided by law; district judges shall reside in the district for which they were chosen during their terms of office. No justice or clerk of the supreme court, nor judge or clerk of any district court shall act or

The justices of the supreme court shall be elected by the electors of the state at large, as hereinafter provided. [Article VIII, Section 6]

There shall be elected at the first general election, provided for by this constitution, one chief justice and two associate justices of the supreme court. At said first election the chief justice shall be elected to hold his office until the general election in the year one thousand eight hundred ninety-two (1892), and one of the associate justices to hold office until the general election in the year one thousand eight hundred ninety-four (1894), and the other associate justice to hold his office until the general election in the year one thousand eight hundred ninety-six (1896), and each shall hold until his successor is elected and qualified. The terms of office of said justices, and which one shall be chief justice, shall at the first and all subsequent elections be designated by ballot. After said first election one chief justice or one associate justice shall be elected at the general election every two years, commencing in the year one thousand eight hundred ninety-two (1892), and if the legislative assembly shall increase the number of justices to five, the first terms of office of such additional justices shall be fixed by law in such manner that at least one of the five justices shall be elected every two years. The chief justice shall preside at all sessions of the supreme court, and in case of his absence, the associate justice having the shortest term to serve shall preside in his stead [Article VIII, Section 8]

Vacancies in the office of justice of the supreme court, or judge of the district court, or clerk of the supreme court, shall be filled by appointment, by the governor of the state, and vacancies in the offices of county attorney,

practice as an attorney or counselor at law in any court of this state during his continuance in office; nor shall any justice or judge engage in any partisan political activity nor hold any other public office nor be a candidate for partisan elective office during his term of office.

clerk of the district court, and justices of the peace, shall be filled by appointment, by the board of county commissioners of the county where such vacancy occurs. A person appointed to fill any such vacancy shall hold his office until the next general election and until his successor is elected and qualified. A person elected to fill a vacancy shall hold office until the expiration of the term for which the person he succeeds was elected. [Article VIII, Section 34]

No person shall be eligible to the office of justice of the supreme court, unless he shall have been admitted to practice law in the supreme court of the territory or state of Montana, be at least thirty years of age, and a citizen of the United States, nor unless he shall have resided in said territory or state at least two years next preceding his election. [Article VIII, Section 10]

No person shall be eligible to the office of judge of the district court unless he be at least twenty-five years of age and a citizen of the United States, and shall have been admitted to practice law in the supreme court of the territory of state of Montana, nor unless he shall have resided in this state or territory at least one year next preceding his election. He need not be a resident of the district for which he is elected at the time of his election, but after his election he shall reside in the district for which he is elected during his term of office. [Article VIII, Section 16]

All officers provided for in this article, excepting justices of the supreme court, who shall reside within the state, shall respectively reside during their term of office in the district, county, township, precinct, city or town for which they may be elected or appointed. [Article VIII, Section 33]

No justice or clerk of the supreme court, nor judge or clerk of any district court shall act or practice as an attorney or counselor at law in any court of this state during his continuance in office
[Article VIII, Section 31]

No justice of the supreme court or district judge shall hold any other public office while he remains in the office to which he has been elected or appointed.
[Article VIII, Section 35]

Comment: This section will make possible, but not require, some method of selection of judges and justices other than the present mandatory method of popular election. The Missouri Plan or some variant thereof could be adopted by the legislature under this provision at some future date. This section also gives the legislature authority to devise less cumbersome methods of removing judges as recommended by the Legislative Council. The first sentences replace current Sections 6, 8, and 34.

The provisions for filling vacancies is similar to the present provision in Section 34. Perhaps since this proposed section gives the legislature the power to "provide for the election or other method of selection of justices and judges, and for their censure, suspension, removal, or retirement by methods alternative to or in addition to those provided by Article V, Section 17, of this Constitution or any other provision" the legislature should also be given the power to provide for the method of filling vacancies. The method of filling vacancies should be consistent with the method of selection.

The qualifications and resident requirements for district court judges and supreme court justices are substitutes for the present Sections 10, 16, and 33. There is no good reason why these matters are separate in the present constitution, and this is an attempt to achieve consolidation.

The last sentence combines present Sections 31 and 35. Section 31 is repeated verbatim and Section 35 is modified to eliminate obsolete language. This section does not include magistrates in the prohibitions. The prohibition on partisan activity is new.

Section 11. The justices of the supreme court and the judges of the district courts shall be paid by the state a salary which shall not be diminished during the terms for which they shall have been respectively elected. Other costs of the judicial

The justices of the supreme court and the judges of the district courts shall each be paid quarterly by the state, a salary, which shall not be diminished during the terms for which they shall have been respectively elected.
[Article VIII, Section 29]

system shall be borne by the units of local government and by the state of Montana in such proportions and in such manner as the legislature shall provide. No justice of the supreme court nor judge or magistrate of the district court shall accept or receive any compensation, fee, allowance, prequisite or emolument for on account of his office, in any form whatever, except salary and expenses provided by law.

No justice of the supreme court nor judge of the district court shall accept or receive any compensation, fee, allowance, mileage, prequisite or emolument for on on account of his office, in any form whatever, except the salary provided by law
[Article VII, Section 30]

Comment: The first and second sentences are new and substitute for the present Section 29 pertaining to judicial salaries. They do away with quarterly payments of judicial salaries and provide for the apportionment of other costs of the judicial system between units of local government and the state by the legislature.

The last sentence is the same as present Section 30, except that prohibition upon the payment of mileage to judges has been eliminated and the payment of expenses expressly authorized.

Sections Deleted

At least three terms of the supreme court shall be held each year at the seat of government.
[Article VIII, Section 4]

The district court in each county which is a judicial district by itself shall be always open for the transaction of business, except on legal holidays and non-judicial days. In each district where two or more counties are united, until otherwise provided by law, the judges of such district shall fix the term of court, provided that there shall be at least four terms a year held in each county.
[Article VIII, Section 17]

Comment: This revision omits the sections of the present article dealing with the terms of the supreme court (Section 4) and the terms of the district courts (Section 16), since times and places for holding court are matters of judicial administration for which the suggested substitution makes new provisions.

There shall be elected at the general election in each county of the state

one county attorney, whose qualifications shall be the same as are required for a judge of the district court, except that he must be over twenty-one years of age, but need not be twenty-five years of age, and whose term of office shall be four years, and until their successors are elected and qualified. He shall have a salary to be fixed by law, one-half of which shall be paid by the state, and the other half by the county for which he is elected, and he shall perform such duties as may be required by law.
[Article VIII, Section 19]

Comment: The subcommittee concurs with the Legislative Council recommendation that discretion to specify county officials should be vested in the legislative assembly and that this section should be deleted.

There shall be elected in each organized township of each county by the electors of such township at least two justices of the peace, who shall hold their offices, except as otherwise provided in this constitution, for the term of two years. Justices' courts shall have such original jurisdiction within their respective counties as may be prescribed by law, except as in this constitution otherwise provided; provided, that they shall not have jurisdiction in any case where the debt, damage, claim or value of the property involved exceeds the sum of three hundred dollars.
[Article VIII, Section 20]

Justices' courts shall not have jurisdiction in any case involving the title or right of possession of real property, nor in cases of divorce, nor for annulment of marriage, nor of cases in equity; nor shall they have power to issue writs of habeas corpus, mandamus, certiorari, quo warranto, injunction, or prohibition, nor the power of naturalization; nor shall they have jurisdiction in cases of felony, except as examining courts; nor shall criminal cases in said courts be prosecuted by indictment; but said courts shall have such jurisdiction in

criminal matters, not of the grade of felony, as may be provided by law; and shall also have concurrent jurisdiction with the district courts in cases of forcible entry and unlawful detainer.
[Article VIII, Section 21]

Justices' courts shall alwasy be open for the transaction of business, except on legal holidays and nonjudicial days.
[Article VIII, Section 22]

Appeal shall be allowed from justices' courts, in all cases, to the district courts, in such manner and under such regulations as may be prescribed by law.
[Article VIII, Section 23]

The legislative assembly shall have power to provide for creating such police and municipal courts and magistrates for cities and towns as may be deemed necessary from time to time, who shall have jurisdiction in all cases arising under the ordinances of such cities and towns, respectively; such police magistrates may also be constituted ex-officio justices of the peace for their respective counties.
[Article VIII, Section 24]

Comment: This revision omits the provisions dealing with justices of the peace, and police and municipal courts (Sections 20 to 24), since the jurisdictions of these courts is absorbed into the jurisdiction of the district courts.

The legislative assembly may provide for the publication of decisions and opinions of the supreme court.
[Article VIII, Section 32]

Comment: The subcommittee concurs with the Legislative Council comment that permission for the legislative assembly to privide for publication of the Montana Reports is not necessary and that the section should be deleted.

Any judicial officer who shall absent himself from the state for more than sixty consecutive days shall be deemed to have forfeited his office. [Article VIII, Section 37]

Comment: The judicial subcommittee concurs with the Judicial Reform Committee decision to delete this section.

A civil action in the district court may be tried by a judge pro tempore, who must be a member of the bar of the state, agreed upon in writing by the parties litigant, or their attorneys of record, approved by the court, and sworn to try the cause; and in such any order, judgment or decree, made or rendered therein by such judge pro tempore, shall have the same force and effect as if made or rendered by the court with the regular judge presiding. [Article VIII, Section 36]

Comment: Present Section 36, which provides for the trial of civil actions by judges pro tempore has been completely eliminated. Other provisions which facilitate the assignment of judges easily and quickly, such as Section 4 and 8, would seem to make provision for judges pro tempore unnecessary. The Legislative Council concluded that this section should be repealed.

ACTION TAKEN BY JUDICIAL SUBCOMMITTEE OF MONTANA CONSTITUTION REVISION COMMISSION ON DRAFT AMENDMENT PREPARED BY JUDICIAL REFORM COMMITTEE OF MONTANA BAR ASSOCIATION

Location in Judicial Subcommittee Draft	Judicial Reform Committee Draft	Action Taken by Judicial Subcommittee
	ARTICLE VIII	
Section 1	Section 1	Approve
2 and 4	2	Approve
4	3	Approve
3	4	Approve
5	5	Approve--first sentence revised: The supreme court shall consist of a chief justice and four (4) associate justices and the legislative assembly shall have the power to increase the number of associate justices to no more than six (6). A majority of justices shall be necessary to form a quorum or pronounce a decision, but one or more justice may adjourn the court from day to day, or to a day certain.
10	6	Approve
5	7	Approve
4	8	Approve
6	9	Approve--place following sentence in Section 10: A vacancy in the office of district court judge shall be filled by the governor.
8	10	Approve--Subcommittee did not agree on language of last sentence and referred this section to the Commission. Alternative language considered: Compensation of magistrates shall be fixed by the appointing judge or judges as provided by law.
7	11	Approve--but transfer following sentence to new Section 10: A vacancy in the office of district court judge shall be filled by the governor.
7	12	Approve--but delete "in each county."
9	13	Approve
9	14	Approve
10	15	Approve
9	16	Approve
9	17	Approve
9	18	Approve
	19	The Bar Association proposal does not amend present Section 19. The Judicial Subcommittee concurs with the Legislative Council recommendation that discretion to specify county officials should be vested in the Legislative Assembly and that this section should be repealed. If the judicial article is amended as a single amendment, Section 19 could be excluded as it is in the Bar Association proposal.

Section 11	Section 20	Approve
11	21	Approve
10	22	Approve--but delete prohibition on clerk engaging in partisan political activity.
	23	Delete as unnecessary
	24	Delete as unnecessary
	25	See Section 26.
	26	Sections 25 and 26 are transitional in nature. The Judicial Subcommittee suggests that they be made only temporarily effective (to be dropped from the constitution as of a certain date) or be placed in the schedule article if the judicial article is part of a new constitution proposed by a convention.

ARTICLE III

Section	8	Approve
	23	Approve

ARTICLE V

Section	26	Approve--will probably recommend deletion of entire section, except for revision of first and last sentences.

DRAFT AMENDMENT OF JUDICIAL ARTICLE PREPARED BY
JUDICIAL REFORM COMMITTEE OF MONTANA BAR ASSOCIATION

Section 1. The judicial power of the state shall be vested in the senate sitting as a court of impeachment, in a supreme court and district courts.

Section 2. The supreme court, except as otherwise provided in this constitution, shall have appellate jurisdiction only, which shall be co-extensive with the state, and shall have a general supervisory and administrative control over all inferior courts, under such regulations and limitations as may be prescribed by law.

Section 3. The legislature in its discretion may create an office of court administrator to assist the supreme court in its administrative functions.

Section 4. The appellate jurisdiction of the supreme court shall extend to all cases at law and in equity, subject, however, to such limitations and limitations and regulations as may be prescribed by law. Said court shall have power in its discretion to issue and to hear and determine writs of habeas corpus, mandamus, quo warranto, certiorari, prohibition, injunction, and such other original and remedial writs as may be necessary or proper to the complete exercise of its appellate jurisdiction. When a jury is required in the supreme court to determine as issue of fact, said court shall have power to summon such jury in such manner as may be provided by law. Each of the justices of the supreme court shall have power to issue writs of habeas corpus to any part of the state, upon petition by or on behalf of any person held in actual custody, and may make such writs returnable before himself, or the supreme court, or before any district court of the state, or any judge thereof; and such writs may be heard and determined by the justice or court, or judge, before whom they are made returnable. Each of the justices of the supreme court may also issue and hear and determine writs of certiorari in proceedings for contempt in the district court, and such other writs as he may be authorized by law to issue.

Section 5. The supreme court shall consist of five (5) justices, a majority of whom shall be necessary to form a quorum or pronounce a decision, but one or more of said justices may adjourn the court from day to day, or to a day certain, and the legislative assembly shall have power to increase the number of said justices to no more than seven. In case any justice of the supreme court shall be in any way disqualified to sit in a cause brought before such court, the remaining justice or justices shall have power to call on one or more of the district judges of this state as in the particular case may be necessary to constitute the full number of justices of which the said court shall then be composed, to sit with them in the hearing of said cause. In all cases where a district judge is invited to sit and does sit as by this section provided, the decision and opinion of such district judge shall have the same force and effect in any case heard before the court as if regularly participated in by a justice of the supreme court.

Section 6. A vacancy in the office of Chief Justice or Justice of the supreme court shall be filled by appointment by the governor.

Section 7. The term of office of the chief justice and other justices of the supreme court, except as in the constitution otherwise provided, shall be six years. The Chief Justice shall preside at all sessions of the supreme court, and in case of his absence shall appoint an Associate Justice to preside in his stead.

Section 8. The clerk of the supreme court shall be selected as provided by law and his term and compensation shall be fixed by law and his duties shall be prescribed by law and by rules of the supreme court.

Section 9. The district courts shall have original jurisdiction of all justiciable to issue original and remedial writs. Their process shall extend to all parts of the state, and may be issued and served on legal holidays and non-judicial days. Jurisdiction to review administrative action shall be as provided by law. They shall have power of naturalization, and to issue papers therefor, in all cases where they are authorized to do so by the laws of the United States.

Section 10. The judge or judges of each district, with the approval of the Chief Justice of the Supreme Court, may create one or more magistrates' offices. Magistrates shall be assigned to such matters and cases as shall be prescribed by law, except criminal cases amounting to felonies in which magistrates may act only as committing and examining courts. Magistrates shall exercise the jurisdiction of district courts in all matters and cases assigned to them and shall serve at the pleasure of the appointing judge or judges. Compensation of magistrates shall be fixed by the appointing judge or judges.

Section 11. The state shall be divided into judicial districts and shall have such numbers of district judges therein as may be provided by law. No change in the number of boundaries of districts, or diminution of the number of judges, shall have the effect of removing a judge from office. Such change in districts or the number of judges therein shall not take place more frequently than every four years. The terms of district court judges shall be four years. A vacancy in the office of district court judge shall be filled by the Governor. Any judge of a district court may hold court for any other district court when requested to do so by a district judge of the other district.

Section 12. There shall be a clerk of the district court in each county, who shall be selected as provided by law and whose term, duties and compensation shall be fixed by law.

Section 13. Appeals shall be allowed from decisions of district courts and magistrates to the supreme court, under such regulations as may be prescribed by law.

Section 14. The supreme court and district courts shall be courts of record.

Section 15. No person shall be eligible to the office of justice of the supreme court, judge of a district court, or district court magistrate, unless he shall have been admitted to practice law in the supreme court of Montana, and be a citizen of the United States except that a district court

magistrate need not have been admitted to the practice of law if a judge of the district for which the appointment is made shall certify that no person who has been admitted to the practice of law in the supreme court of Montana is available and shall file such certification with the supreme court of Montana. No person shall be eligible to the office of the justice of the supreme court unless he shall be at least thirty years of age and shall have resided in the state at least two years next preceding his appointment or selection as provided by law. No person shall be eligible to the office of district judge or district court magistrate unless he shall be at least twenty-five years of age and have resided within the state at least one year next preceding his appointment or selection as provided by law. District judges and magistrates need not be residents of the district for which they are chosen at the time of their selection as provided by law; district judges shall reside in the district for which they were chosen during their terms of office.

Section 16. All laws and court rules relating to courts shall be general and of uniform operation throughout the state; and the organization, jurisdiction, powers, proceedings and practice of all courts shall be uniform in the same class or grade of case.

Section 17. The style of all process shall be 'The State of Montana', and all prosecutions shall be conducted in the name and by the authority of the same.

Section 18. There shall be but one form of civil action, and law and equity may be administered in the same action.

Section 20. The justices of the supreme court and the judges of the district courts shall be paid by the state a salary which shall not be diminished during the terms for which they shall have been respectively elected. Other costs of the judicial system shall be borne by the counties, cities, towns, and by the state of Montana in such proportions and in such manner as the legislature shall provide.

Section 21. No justice of the supreme court nor judge or magistrate of the district court shall accept or receive any compensation, fee, allowance, perquisite or emolument for or on account of his office, in any form whatever, except salary and expenses provided by law.

Section 22. No justice or clerk of the supreme court, nor judge or clerk of any district court shall act or practice as an attorney or counsellor at law in any court of this state during his continuance in office; nor shall any justice, judge or clerk engage in any partisan political activity nor hold any other public office nor be a candidate for partisan elective office during his term of office.

Section 23. The legislative assembly may provide for the publication of decisions and opinions of the supreme court.

Section 24. Revenues from fines and fee charges by the courts of Montana shall be distributed as shall be provided by the legislature.

Section 25. The offices of justice of the peace, police judge and judge of municipal court are abolished.

Section 26. On the effective date of this article: (1) Each court into which jurisdiction of other courts is transferred shall succeed to and assume jurisdiction of all causes, matters and proceedings then pending, with full power to carry into execution or otherwise give effect to all orders, judgments and decrees entered by the predecessor courts. (2) The files, books, papers, records, documents, moneys, securities, and other property in the possession, custody or under the control of courts hereby abolished, or any officer thereof, are transferred to the district court; and thereafter all proceedings in all courts shall be matters of record.

Section 27. The legislature may provide for the election or other method of selection of justices and judges, and for their censure, suspension, removal or retirement by methods alternative to or in addition to those provided by Article V, section 17, of this Constitution or any other provision thereof.

REVISION OF LOCAL GOVERNMENT ARTICLE

[Article VII in Proposed Constitution;
Article XVI in Present Constitution]

COMPARISON OF PRESENT ARTICLE XVI WITH PROPOSED
ARTICLE VII AND RECOMMENDATIONS OF LEGISLATIVE COUNCIL

Present Article	Legis. Council Recommendation	Subcommittee Recommendation	Location in Proposed Article
XVI, Sec. 1	repeal	delete	--
2	adequate	delete	--
3	repeal	delete	--
4	repeal	delete	--
5	repeal	delete	--
6	repeal	delete	--
7	adequate	revise	Section 3
8	revise	revise	Section 3

Proposed Constitution	Present Constitution
Article VII LOCAL GOVERNMENT	Article XVI COUNTIES--MUNICIPAL CORPORATIONS AND OFFICES
Section 1. Purpose and Construction. The purpose of this article is to provide for maximum local self-government and intergovernmental cooperation. Units of local government shall have the powers and privileges granted to them by this constitution, all of which shall be liberally construed in favor of units of local government.	New Section.
Section 2. Definition. As used in this and other articles of this constitution, the term unit of local government shall mean any public entity organized in the manner prescribed by law, with boundaries in some defined portion of the state and with officials who are elected by voters residing within such boundaries or who are appointed by officials so elected. A unit of local government shall include counties, cities, towns, or other civil divisions, or any of these units functioning in a consolidated organization.	New Section.
Section 3. Organization of Local Government. The legislature shall provide by general law for the government of counties, cities, towns, and other civil divisions and for methods and procedures of incorporating, merging, consolidating, and	The legislative assembly may, by general law, provide any plan, manner or form of municipal government for counties, or counties and cities and towns, and whenever deemed necessary or advisable, may abolish city or town government and unite, consolidate or merge cities and towns

dissolving such units of local government and of altering their boundaries, including provisions:

(1) For such classification of units of local government as may be necessary on the basis of population or on any other reasonable basis related to the purpose of the classification;

(2) For optional plans of municipal organization and government so as to enable a county or city to adopt or abandon an authorized optional charter by a majority vote of the qualified voters voting thereon;

(3) For procedures by which a county or a city may prepare an alternative plan of municipal organization and government to be adopted or amended by a majority vote of the qualified voters of the city or county voting thereon.

(4) For procedures by which a county, city, and town, or counties and cities and towns may prepare an alternative form of consolidated municipal government to be adopted or amended by a majority vote of the qualified voters of the jurisdictions affected.

and county under one municipal government, and any limitations in this constitution notwithstanding, may designate the name, fix and prescribe the number, designation, terms, qualifications, method of appointment, election or removal of the officers thereof, define their duties and fix penalties for the violation thereof, and fix and define boundaries of the territory so governed, and may provide for the discontinuance of such form of government when deemed advisable; provided, however, that no form of government permitted in this section shall be adopted or discontinued until after it is submitted to the qualified electors in the territory affected and by them approved.
[Article XVI, Section 7]

Any county or counties in existence on the first day of January, 1935, under the laws of the state of Montana or which may thereafter be created or established thereunder shall not be abandoned, abolished and/or consolidated either in whole or in part or at all with any other county or counties except by a majority vote of the duly qualified electors in each county proposed to be abandoned, abolished and/or consolidated with any other county or counties expressed at a general or special election held under the laws of said state.
[Article XVI, Section 8]

Section 4. Powers of Units of Local Government. A unit of local government may exercise any legislative power or perform any function which is not denied to it by its charter, is not denied to units of local government generally or to its class of local government, and is within such limitations as the legislature shall establish by general law. This grant of powers to units of local government shall not include the power to enact private or civil law governing civil relationships except as incident to an exercise of an independent county or city power, nor shall it include power to define and provide for the punishment of a felony.

New Section.

Section 5. Intergovernmental Cooperation. Subject to any limitation which the legislature may make by statute, the state, or any one or more of its units of local government, may exercise any of their respective powers, or perform any of their respective functions and may participe in the financing thereof jointly or in cooperation with any one or more units of local government within this state or with other states, or units of local government of other states, or with the United States.

New Section.

Deleted Sections

The several counties of the territory of Montana, as they shall exist at the time of the admission of the state into the Union, are hereby declared to be the counties

of the state until otherwise established or changed by law.
[Article XVI, Section 1]

The legislative assembly shall have no power to remove the county seat of any county, but the same shall be provided for by general law; and no county seat shall be removed unless a majority of the qualified electors of the county, at a general election on a proposition to remove the county seat, shall vote therefor; but no such proposition shall be submitted oftener than once in four years.
[Article XVI, Section 2]

In all cases of the establishment of a new county it shall be held to pay its ratable proportion of all then existing liabilities of the county or counties from which it is formed, less the ratable proportion of the value of the county buildings and property of the county or counties from which it is formed; provided that nothing in this section shall prevent the re-adjustment of county lines between existing counties.
[Article XVI, Section 3]

In each county there shall be elected three county commissioners, whose term of office shall be six years; provided that each county in the state of Montana shall be divided into three commissioner districts, to be designated as commissioner districts, numbers one, two and three, respectively.

The board of county commissioners shall in every county in the state of Montana, at their regular session, on the first Monday in May, 1929, or as soon thereafter as convenient or possible, not exceeding sixty days thereafter, meet and by and under the direction of the district court judge or judges of said county, divide their respective counties into three commissioner districts as compact and equal in population and area as possible, and number them respectively, one, two and three, and when such division has been made, there shall be filed in the office of the county clerk and recorder of such county, a certificate designating the metes and bounds of the boundary lines and limits of each of said commissioners districts, which certificate shall be signed by said judge or judges; provided, also that at the first regular session of any newly organized and created county, the said board of county commissioners, by and under the direction of the district court judge or judges of said county, shall divide such new county into commissioner districts as herein provided.

Upon such division, the board of county commissioners shall assign its members to such districts in the following manner; each member of the said board then in service shall be assigned to the district in which he is residing or the nearest thereto; the senior member of the board in service to be assigned to

the commissioner district No. 1, the next member in seniority to be assigned to commissioner district No. 2, and the junior member of the board to be assigned to commissioner district No. 3; provided, that at the first general election of any newly created and organized county, the commissioner for district No. 1, shall be elected for two years, for No. 2, for four years, and for No. 3, for six years, and biennially thereafter there shall be one commissioner elected to take place of the retiring commissioner, who shall hold his office for six years.

That the board of county commissioners by and under the direction of the district court judge or judges of said county, for the purpose of equalizing in population and area such commissioner districts, may change the boundaries of any or all of the commissioner districts in their respective county, by filing in the office of the county clerk and recorder of such county, a certificate signed by said judge or judges designating by metes and bounds the boundary lines of each of said commissioner districts as changed, and such change in any or all districts in such county, shall become effective from and after filing of such certificate; provided, however, that the boundaries of no commissioner district shall at any time be changed in such a manner as to affect the term of office of any county commissioner who has been elected, and whose term

of office has not expired; and provided, further, that no change in the boundaries of any commissioner district shall be made within six months next preceding a general election.

At the general election to be held in 1930, and thereafter at each general election, the member or members of the board to be elected, shall be selected from the residents and electors of the district or districts in which the vacancy occurs, but the election of such member or members of the board shall be submitted to the entire electorate of the county, provided, however, that no one shall be elected as a member of said board, who has not resided in said district for at least two years next preceding the time when he shall become a candidate for said office.

When a vacancy occurs in the board of county commissioners the judge or judges of the judicial district in which the vacancy occurs, shall appoint someone residing in such commissioner district where the vacancy occurs, to fill the office until the next general election when a commissioner shall be elected to fill the unexpired term. [Article XVI, Section 4]

There shall be elected in each county the following county officers who shall possess the qualifications for suffrage prescribed by section 2 of article IX of this constitution and such other qualifications as may be prescribed by law:

One county clerk who shall be clerk of the board of county commissioners and ex-officio recorder; one sheriff; one treasurer, who shall be collector of the taxes, provided, that the county treasurer, shall not be eligible to his office for the succeeding term; one county superintendent of schools; one county surveyor; one assessor; one coroner; one public administrator. Persons elected to the different offices named in this section shall hold their respective offices for the term of four (4) years, and until their successors are elected and qualified. Vacancies in all county, township and precinct offices, except that of county commissioners, shall be filled by appointment by the board of county commissioners, and the appointee shall hold his office until the next general election; provided, however, that the board of county commissioners of any county may, in its discretion, consolidate any two or more of the within named offices and combine the powers and the duties of the said offices consolidated; however, the provisions hereof shall not be construed as allowing one (1) office incumbent to be entitled to the salaries and emoluments of two (2) or more offices; provided, further, that in consolidating county offices, the board of county commissioners shall, six (6) months prior to the general election held for the purpose of electing the aforesaid offices, make and enter an order, combining any two (2) or more of

the within named offices, and shall cause the said order to be published in a newspaper, published and circulated generally in said county, for a period of six (6) weeks next following the date of entry of said order.
[Article XVI, Section 5]

The legislative assembly may provide for the election or appointment of such other county, township, precinct and municipal officers as public convenience may require and their terms of office shall be as prescribed by law, not in any case to exceed two years, except as in this constitution otherwise provided.

Comment: The Subcommittee on Local Government purposely declines to propose specific provisions to be incorporated into a new article on local government in a revised Montana Constitution. The Subcommittee recommended that the present Article XVI be deleted from the Constitution and a new article on local government be substituted. The Subcommittee concludes that in providing for units of local government, the Montana Constitution should:

(1) Continue the present authorization to the legislature to provide optional forms of government for counties, cities, and towns or for any of these units of local government in a consolidated organization.

(2) Omit constitutional detail on the structure and procedures of county government, reserving these matters for statutory provisions.

(3) Grant as much freedom of action as possible in local affairs so that units of local government can use their own power and initiative in meeting future responsibilities.

(4) Free the legislature of acting on a host of local bills without impairing its power to

act in matters of statewide and regional concern and to facilitate the ability of local governments to respond to changing conditions and changing local needs.

(5) Permit and encourage intergovernmental cooperation in meeting problems that can best be handled by the coordinated activity of units of local government, acting in combination with one another or with agencies of the state.

To illustrate the kind of constitutional framework deemed desirable for Montana, the Subcommittee prepared the composite article on local government, with provisions freely adapted from the Idaho Constitution (on definition); the Alaska Constitution (on purpose and construction); from the National Municipal League's Model State Constitution (for provisions for organization and powers of local government), and from a suggestion of the Advisory Commission on Intergovernmental Relations (for sanction of intergovernmental cooperation).

Should a similar article on local government be adopted in Montana, the principal results would include the following:

(1) Such an article would clearly state that it is the intention of the people to vest in local government maximum freedom in dealing with local affairs.

(2) At the same time, the article would leave unimparied the power of the legislature to enact laws of statewide or regional concern, to delegate taxing power to localities, or to apportion state revenues among units of local government.

(3) As suggested by the Legislative Council in 1968, precise details of county government would become statutory, not constitutional matters. The present arrangement under which the legislature can provide optional forms of organization for units of local government and for consolidated systems of local government for local adoption would be continued, as would legislative freedom to classify counties, cities, and other units of local government.

(4) There would be, in addition, opportunity for counties and cities, or counties, cities

and towns acting in combination, to devise their own structure of government, subject to local adoption.

(5) There would be a constitutional grant of residual power vested in units of local government. As a result, they could exert any power not denied them by general law.

(6) There would be constitutional sanction of cooperative agreements between the state, units of local government, other states and their units of local government, and the United States.

REVISION OF TAXATION AND FINANCE ARTICLE
[Article VIII in Proposed Constitution; Article XII in Present Constitution]

COMPARISON OF PRESENT ARTICLE XII WITH PROPOSED ARTICLE VIII
AND RECOMMENDATIONS OF LEGISLATIVE COUNCIL

Present Article	Legis. Council Recommendation	Subcommittee Recommendation	Location in Proposed Article
XII, Sec. 1	adequate	revise	Section 1
1a	adequate	revise	1
1b	adequate	retain	2
2	adequate	retain	3
3	repeal	delete	--
4	adequate	retain	4
5	adequate	revise	5
6	adequate	retain	6
7	adequate	retain	7
8	adequate	revise	8
9	revise	revise	1
10	adequate	retain	9
11	adequate	retain	10
12	adequate	revise	11
13	repeal	delete	--
14	repeal	delete	--
15	repeal	delete	--
16	revise	revise	12
17	adequate	retain	13
18	repeal	delete	--

Proposed Constitution

Article VIII
TAXATION AND FINANCE

Comment: Proposed Articles VIII, Taxation and Finance; IX, Public Debt; and X, Trust and Legacy Fund could be combined in one article on Finance.

Section 1. The rates and methods of taxation of personal and corporate income and of real and personal property and license tax upon persons and corporations for both state and local purposes shall be determined by law.

Present Constitution

Article XII
REVENUE AND TAXATION

The necessary revenue for the support and maintenance of the state shall be provided by the legislative assembly, which shall levy a uniform rate of assessment and taxation, and shall prescribe such regulations as shall secure a just valuation for taxation of all property, except that specially provided for in this article. The legislative assembly may also impose a license tax, both upon persons and upon corporations doing business in the state.
[Article XII, Section 1]

The legislative assembly may levy and collect taxes upon incomes of persons, firms and corporations for the purpose of replacing property taxes. These income taxes may be graduated and progressive and shall be distributed to the public schools and to the state government.
[Article XII, Section 1a].

The rate of taxation on real and personal property for state purposes, except as hereinafter provided, shall never exceed two and one-half mills on each dollar of valuation; and whenever the taxable property of the state shall amount to six hundred million dollars ($600,000,000.00) the rate shall never exceed two (2) mills on each dollar of valuation, unless the proposition to increase such rate, specifying the rate proposed and the time during which the rate shall be levied shall have been submitted to votes cast for and against it at such election; provided, that in addition to the levy for state purposes above provided for, a special levy in

addition may be made on live stock for the purpose of paying bounties on wild animals and for stock inspection, protection and indemnity purposes, as may be prescribed by law, and such special levy shall be made and levied annually in amount not exceeding four mills on the dollar by the state board of equalization, as may be provided by law. [Article XII, Section 9]

Comment: In its simplest form, the problem of what to include in the article on taxation and finance is a test of one's belief in our system of representative democracy. It is difficult to reconcile a position demanding a series of constitutional prohibitions or limitations upon the legislature's exercise of discretion in respect to taxation and finance with a real belief in democracy. Those who argue for constitutional checks are admitting a lack of belief in the capacity or desire of the elected representatives of the voters to establish and maintain an adequate and equitable system of financing public expenditures.

This section vests broad authority in the legislature to determine "an adequate and equitable system of financing public expenditures." The proposed section provided for taxation of personal and corporate income, real and personal property, and license tax upon persons and corporations, all of which are provided for in present Section 1. The proposed language will replace the present sections 1, 1a, and 9.

The Legislative Council in 1968 said:

> Few, if any, provisions of the Montana constitution are more complex than those on revenue and taxation. This complexity is illustrated by extensive court cases interpreting the language. Without a very careful review of these court cases, the provisions are not readily understandable. Aside from the issue of how much discretion in taxation and finance should be vested in the Legislative Assembly, the provisions of this article could be improved markedly by clarification. Substantial changes in this article should be made only after extensive research.

The subcommittee agrees with this conclusion. Contact has been established with the Interim Committee on Fiscal Affairs, which is currently studying fiscal problems as they affect local government and the state of Montana. The purpose of the study is to provide factual and analytical material that clarifies what the Montana fiscal system is and the fiscal problems faced. The study will develop useful data and analytical material upon which legislators and the governor and other political leaders can base their fiscal planning.

The recommendations of this subcommittee are intended to remove most constitutional restrictions on state and local finances and vest the authority in the legislature to determine by statute state and local

tax structure. The effect of current sections and revisions proposed will be further examined before final recommendations are made.

Section 2. No monies paid into the state treasury which are derived from fees, excises or license taxes relating to registration, operation or use of vehicles on the public highways or to fuels used for the propulsion of such vehicles, except fees and charges paid to the board of railroad commissioners of the state of Montana and the public service commission of Montana or its successor or successors by motor carriers pursuant to law, shall be expended for other than cost of administering laws under which such monies are derived, statutory refunds and adjustments provided therein, payment of highway obligations, cost of construction, reconstruction, maintenance and repair of public highways, roads, streets, and bridges, and expenses authorized by the state legislature for dissemination of public information relating to the public highways, roads, streets and bridges of the state of Montana and the use thereof.

No change from Article XII, Section 1b.

Only one of the six constitutions used for comparative purposes earmarks funds for highway purposes. This section was added by amendment in 1956. Discussing earmarked funds in 1962, the Legislative Council stated: "As a means of allocating resources, earmarking is inefficient because it fails to recognize relativity of needs. Resources are distributed, not by a conscious evaluation of the needs of all agencies, but by arbitrary constitutional and statutory formulas. A dedicated revenue tends to create a vested interest in continuing arrangements, which experience and passage of time may prove to be contrary to the public interest. Even if there be at first a proper relation between the proceeds of a given tax and the need for expenditure for a given service, there is no reason to assume that the relationship will continue to exist. Experience demonstrates that once a dedicated fund has been set up it is extremely difficult to deal with on its merits." The 1969 Legislative Council concurred in its conclusion that this section should be repealed.

The subcommittee notes that this section was added by amendment as recently as 1956.

Earmarking has been used extensively by the states. There are 36 states which earmark funds through constitutional provisions. Every state in the union earmarks some portion of its funds. This can be done by statute,

rather than constitutional provisions, as Montana does for education. In Montana about 50 percent of the state tax collections are earmarked by function, highways accounting for over 30 percent.

"The rationale for earmarking is fairly persuasive, and in no other area has it been applied more successfully than for highways. Simply stated, it is that the taxes upon gasoline and motor vehicles are devices by which motorists pay for the roads upon which they travel. Therefore, the money collected should be spent solely upon roads and to 'divert' it would be to take money under false pretenses.

"To a limited extent, this argument is plausible. However, if applied generally, it would be difficult to finance many state government services, especially those to clienteles less fortunate than motorists. Moreover, the earmarking principle is defective in that it completely ignores the relativity of need for public services. Because of it, there are many instances where some activities are financed on a relatively more adequate basis than are those whose support is provided from general revenues." [Frank H. Landers, "Taxation and Finance." (State Constitutional Revision, ed. W. Brooke Graves.) Chicago: Public Administration Service, 1960, p. 230.]

One criticism leveled against constitutional earmarking is that even when it meets a test of direct payment-benefit linkage, it removes a portion of government revenues from direct legislative control.

The subcommittee recognizes that this is a very controversial section that was only recently added to the constitution by substantial vote. While recognizing the inefficiency of earmarking funds, the subcommittee does not recommend that this section be deleted.

Section 3. The property of the United States, the state, counties, cities, towns, school districts, municipal corporations and public libraries shall be exempt from taxation; and such other property as may be used exclusively for the agricultural and horticultural societies, for educational purposes, places for actual religious worship, hospitals and places of burial not used or held for private or corporate profit, institutions of purely public charity and evidences of debt secured by mortgages of record upon real or personal property in the state of Montana, may be exempt from taxation.

No change from Article XII, Section 2.

Comment: This section specifies in detail a number of exemptions from taxation; this section was amended in 1918 to exempt mortgages on real and personal property in Montana from taxation. The Legislative Council

in 1964 recommended amendment of this section to permit the legislative assembly to ". . .exempt from property taxation household goods and furniture, wearing apparel, and other personal property used by the owner for personal and domestic purposes" and to permit the legislative assembly to provide in its discretion "for the taxation or exemption from taxation of money, credits, bonds and stocks." [Montana Legislative Council Report No. 16, Property Taxation and the Montana Property Classification Law (December, 1964) pp . 38-39; 49, 50.]

This section appears to be statutory in nature and could be replaced by a provision similar to Section 1(2), Article VIII of the New Jersey Constitution.

The 1967-68 Biennial Report of the State Board of Equalization recommends:

> Montana's Constitution could be amended to permit the legislature to change the property tax laws to eliminate features that are impossible to administer as written, whose effective administration would be economically intolerable, which force administrators to condone evasion, and which encourage taxpayer dishonesty. To protect the integrity of the property tax the Montana legislature should not retain in the property tax base any type of property for which it is unwilling or unable to provide the means for competent assessment.

Section 4. The legislative assembly shall not levy taxes upon the inhabitants or property in any county, city, town, or municipal corporation for county, town, or municipal purposes, but it may by law invest in the corporate authorities thereof powers to assess and collect taxes for such purposes.	No change from Article XII, Section 4.

Comment: The present section gives the legislature the authority to authorize units of local government the power to assess and collect taxes, but it appears to prohibit the state from levying taxes for local government. This presently limits state financial aid to local government to state "license taxes" (gasoline license tax, motor vehicle license tax, liquor license tax, beer license tax, insurance license taxes). State revenue from taxes other than license taxes, under this section, probably cannot be distributed to units of local government.

"Montana falls near the bottom of the list in the proportion of local revenue derived from state sources--16.3 percent in 1962. Only six states show a smaller proportion: Alaska (13.6 percent), Hawaii (11.3), Maine (13.7), New Hampshire (7.0), South Dakota (9.7) and Vermont (12.1). With 90.2 percent, of the Montana total going to education, it is obvious that the state is contributing little to county and municipal support. The

percentage of local government revenues raised from state grants-in-aid and shared taxes has remained relatively constant (15.8 to 16.3 in the two decades from 1942 5o 1962, although the large increases in local budgets has forced substantial increases in the hard-pressed property tax in the same period." [League of Women Voters of Montana, State Local Relations, State and Local Finance (October, 1964), p. 5.]

The subcommittee declined to make a recommendation on this section at the present time. The proposed Section 1 may make this section unnecessary. The section could be revised to give the legislature greater freedom to provide for the financing of local government.

Section 5. Taxes for city, town and school purposes may be levied on all subjects and objects of taxation, but the assessed valuation of any property shall not exceed the valuation of the same property for state and county purposes. Taxes for city, town, and school purposes may also be levied on persons.	Taxes for city, town and school purposes may be levied on all subjects and objects of taxation, but the assessed valuation of any property shall not exceed the valuation of the same property for state and county purposes. [Article XII, Section 5]

Comment: The proposed Section 1 may make this section unnecessary. If this section is retained and persons are not included in "subjects and objects of taxation" the subcommittee recommends addition of last sentence of proposed section.

Section 6. No county, city, town, or other municipal corporation, the inhabitants thereof nor the property therein, shall be released or discharged from their or its proportionate share of state taxes.	No change from Article XII, Section 6.

Comment: This section requires uniform state taxes by prohibiting discharge or release of counties, cities and towns, and their inhabitants or property, from taxation. It was designed to deal with a specific fiscal situation that existed in 1889 and is probably obsolete. It is a restriction upon the legislature.

Section 7. The power to tax corporations or corporate property shall never be relinquished or suspended, and all corporations in this state, or doing business therein, shall be subject to taxation for state, county, school, municipal and other purposes, on real and personal property owned or used by them and not by this constitution exempted from taxation.	No change from Article XII, Section 7.

Comment: The first phrase provides that the power of taxation shall never be suspended and is a limit on the authority granted the legislature in proposed Section 1. The second phrase is probably made unnecessary by proposed Section 1.

Section 8. Private property shall not be taken or sold for the corporate debts of public corporations, but the legislative assembly may provide by law for the funding thereof, and shall provide by law for the payment thereof, including all funded debts and obligations, by taxation of personal and business income and/or by assessment taxation of all private property not exempt from taxation within the limits of the territory over which such corporations respectively have authority.

Private property shall not be taken or sold for the corporate debts of public corporations, but the legislative assembly may provide by law for the funding thereof, and shall provide by law for the payment thereof, including all funded debts and obligations, by assessment and taxation of all private property not exempt from taxation within the limits of the territory over which such corporations respectively have authority. [Article XII, Section 8]

Comment: This section prevents the taking of private property for corporate debts of public corporations. It probably belongs in the article on public debt rather than the article on taxation. The revision adds provision for taxation of personal and business income. This is intended to allow use of taxes other than property taxes as a method of paying public obligations.

The section could be revised by deleting everything after "public corporations." The material deleted is probably covered by the authority in proposed Section 1.

Section 9. All taxes levied for state purposes shall be paid into the state treasury, and no money shall be drawn from the treasury but in pursuance of specific appropriations made by law.

No change from Article XII, Section 10.

Comment: Present Section 10, Article XII, is similar to present Section 34, Article V. The legislative and executive subcommittee recommended deletion of present Section 34, Article V. This section contains the well established safeguard that expenditures of public money shall be made only in accordance with lawful appropriations.

Section 10. Taxes shall be levied and collected by general laws and for public purposes only. They shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax.

No change from Article XII, Section 11.

Comment: This section provides for uniform taxation by general laws and for public public purposes only. It is a reasonable restraint on the authority granted the legislature in proposed Section 1.

Section 11. No appropriation shall be made nor any expenditures authorized by the legislative assembly whereby the expenditures of the state during any fiscal year shall exceed the total tax provided for by law to pay such appropriations or expenditures within the fiscal year. This provision shall not apply to appropriations or expenditures to suppress insurrection, defend the state, or assist in defending the United States in time of war. No appropriation of public moneys shall be made for a longer term than two years.	No appropriation shall be made nor any expenditures authorized by the legislatire assembly whereby the expenditures of the state during any fiscal year shall exceed the total tax then provided for by law, and applicable to such appropriation or expenditure, unless the legislative assembly making such appropriation shall provide for levying a sufficient tax, not exceeding the rate allowed in section nine (9) of this article, to pay such appropriations or expenditures within such fiscal year. This provision shall not apply to appropriations or expenditures to suppress insurrection, defend the state, or assist in defending the United States in time of war. No appropriation of public moneys shall be made for a longer term than two years. [Article XII, Section 12]

Comment: This section prohibits deficit spending during any fiscal year, except for certain defense expenditures. The proposed section deletes the reference to present Section 9. The section limits appropriations to two years.

Section 12. All property shall be assessed in the manner prescribed by law except as is otherwise provided in this constitution. The franchise, roadway, roadbed, rails and rolling stock of all railroads operated in more than one county in this state shall be assessed as provided by law and the same shall be apportioned to the counties, cities, towns, townships and school districts in which such railroads are located, in proportion to the number of miles of railway laid in such counties, cities, towns, townships and school districts.	All property shall be assessed in the manner prescribed by law except as is otherwise provided in this constitution. the franchise, roadway, roadbed, rails and rolling stock of all railroads operated in more than one county in this state shall be assessed by the state board of equalization and the same shall be apportioned to the counties, cities, towns, townships and school districts in which such railroads are located, in proportion to the number of miles of railway laid in such counties, cities, towns, townships and school districts.

Comment: This section is revised as recommended by the Legislative Council by substituting the words "as provided by law" for the words "by the state board of equalization." See comment to present Section 15 below. This section could further be amended to provide simply that "all property shall be assessed in the manner prescribed by law." The rest of the present

section is basically statutory. The method of tax determination, assessment, and collection should be, wherever possible, left to legislative enactment, since improved practices and techniques should be available.

The 1967-68 Biennial Report of the State Board of Equalization recommends:

> State assessment could be extended from including only inter-county property as at present to include property which: (a) requires appraisal specialists beyond the economic scope of most county staffs, and (b) which can be more readily discovered and valued by a central agency.

Section 13. The word property as used in this article is hereby declared to include moneys, credits, bonds, stocks, franchises and all matters and things (real, personal and mixed) capable of private ownership, but this shall not be construed so as to authorize the taxation of the stocks of any company or corporation when the property of such company or corporation represented by such stocks is within the state and has been taxed.

No change from Article XII, Section 7.

Comment: This section defines the word property. The subcommittee is not prepared to judge its adequacy, but notes this section is a limit on the authority granted in proposed Section 1.

Sections Deleted

All mines and mining claims, both placer and rock in place, containing or bearing gold, silver, copper, lead, coal or other valuable mineral deposits, after purchase thereof from the United States, shall be taxed at the price paid the United States therefor, unless the surface ground, or some part thereof, of such mine or claim, is used for other than mining purposes, and has a separate and independent value for such other purposes, in which case said surface ground, or any part thereof, so used for other than mining purposes, shall be taxed at its value for such other purposes, as provided by law; and all machinery used in mining, and all mining claims which have a value separate and independent of such mines or mining claims, and the annual net proceeds of all mines

and mining claims shall be taxed as provided by law.
[Article XII, Section 3]

Comment: This section is statutory. It was included in the constitution by the well organized mining interests at the 1889 convention. The subcommittee concurs with the Legislative Council recommendation that this section be deleted.

The state treasurer shall keep a separate account of each fund in his hands, and shall at the end of each quarter of the fiscal year report to the governor in writing, under oath, the amount of all moneys in his hands to the credit of every such fund, and the place or places where the same is kept or deposited, and the number and amount of every warrant paid or redeemed by him during the quarter. The governor, or other person or persons authorized by law, shall verify said report and cause the same to be immediately published in at least one newspaper printed at the seat of government, and otherwise as the legislative assembly may require. The legislative assembly may provide by law further regulations for the safe keeping and management of the public funds in the hands of the treasurer; but notwithstanding any such regulations, the treasurer and his sureties shall in all cases be held responsible therefor.
[Article XII, Section 13]

Comment: The subcommittee recommends that details concerning administrative matters and procedural specifics which can be best dealt with by statute should be omitted from the constitution. The subcommittee concurs with the Legislative Council recommendation that this section should be repealed and replaced by statute. The subcommittee notes the provision for an executive budget in proposed Section 11, Article V, and the recommendations concerning constitutional officers and boards in the comments to proposed Sections 1 and 8 of Article V (The Executive).

The board of county commissioners of each county shall constitute the county board of equalization. The duties of such board shall be to adjust and equalize the valuation of taxable property within their respective counties, and all such adjustments and equalizations may be

supervised, reviewed, changed, increased or decreased by the state board of equalization. The state board of equalization shall be composed of three members who shall be appointed by the governor, by and with the advice and consent of the senate. A majority of the members of the state board of equalization shall constitute a quorum. The term of office of one of the members first appointed shall end on March 1st, 1925, of another first appointed on March 1st, 1927, and of the third first appointed on March 1st, 1929. Each succeeding member shall hold his office for the term of six years, and until his successor shall have been appointed and qualified. In case of a vacancy the person appointed to fill such vacancy shall hold office for the unexpired term in which the vacancy occurs. The qualifications and salaries of the members of the state board of equalization shall be as provided by law, provided, however, that such members shall be so selected that the board will not be composed of more than two persons who are affiliated with the same political party or organization; provided, further, that each member shall devote his entire time to the duties of the office and shall not hold any position of trust or profit, or engage in any occupation or business interfering or inconsistent with his duties as a member of such board, or serve on or under any committee of any political party or organization, or take part, either directly or indirectly, in any political campaign in the interest of any political party or organization or candidate for office. The state board of equalization shall adjust and equalize the valuation of taxable property among the several counties, and the different classes of taxable property in any county and in the several counties and between individual taxpayers; supervise and review the acts of the county assessors and county boards of equalization; change, increase, or decrease valuations made by county assessors or equalized by county boards of equalization; and exercise such authority and do all things necessary to secure a fair,

just and equitable valuation of all taxable property among counties, between the different classes of property, and between individual taxpayers. Said state board of equalization shall also have such other powers, and perform such other duties relating to taxation as may be prescribed by law.
[Article XII, Section 15]

Comment: This section is statutory; it has been amended twice, with many more amendments proposed. The administration of property tax has been the subject of several studies:

The Montana Legislative Council Report No. 6, Property Taxation in Montana (1960);

The Montana Legislative Council Report No. 16, Property Taxation and the Montana Property Classification Law (1964), especially pp. 31-36;

Special Committee on Classification and Appraisal, Report to the House of Representatives (February 5, 1963);

The Montana Legislative Council Report No. 23, Montana Taxation, December 1966:

Appendix, Part VI, Task Force Papers: Montana Tax Study, Pitkin Publishing Co., Pitkin Colorado (1966).

All of these studies have indicated administrative weakness in the present constitutional method of administrative organizations for property taxation.

The deletion of this section from Article XII would allow the legislature to establish by law an improved method of property tax administration. Presently, this would require a constitutional amendment. The State Board of Equalization, in testimony before the Legislative Council in 1964 agreed there was merit in removing the constitutional status of the board. [Montana Legislative Council Report No. 16, Property Taxation and the Montana Property Classification Law (December, 1964), p. 54.]

The 1967-68 Biennial Report of the State Board of Equalization recommends:

The machinery for employment of qualified and certified assessors might be provided for as follows:

a. Require by legislation that each assessor's office have at least one certified person. If the assessor is not certified it would be necessary to employ a person who is. (Oregon has such a law.)
b. Amend the Montana Constitution to eliminate reference to the elective office of county assessor; thus permitting certified county assessors to be appointed by boards of

county commissioners.

c. Such a change in the Constitution could also be designed to permit two or more small counties to operate a consolidated assessment office. . . .

The incentive for underassessment by counties created by the school foundation payment on values determined by the State Board of Equalization rather than upon taxable values determined by county officials. Several states have such legislation. However, implementation of such a law would require much expansion of the state's sales-assessment ratio studies and appraisal program. Upgrading of local assessment by professionalizing the county assessment function would still be needed.

Because real estate assessment is only one of many duties of county commissioners, and moreover because county commissioners in many counties only meet a few days each month, it has proven impossible for some boards of county commissioners to devote the attention and resources to real estate appraisal and appraisal record maintenance that is needed. The result is that in several instances neither the appraisals nor the records to support them are properly maintained. Further, under the existing separation of duties, there is frequently an inevitable duplication and lack of coordination in property tax assessment. The appraisal of industrial property involving both real estate and personal property is an example. If the above suggested steps were taken to professionalize assessment personnel, further improvement in real estate assessment and considerable efficiency might be gained by putting the real estate assessment function into the professionalized assessor's office.

On file in the Commission office is a paper prepared by Howard H. Lord, chairman of the State Board of Equalization, on Constitutional and Legislative Suggestions for Improved Property Tax Assessment.

The subcommittee concurs with the Legislative Council recommendation that the section should be repealed and replaced by statute.

The legislative assembly shall pass all laws necessary to carry out the provisions of this article.
[Article XII, Section 18]

Comment: This general grant of legislative authority is unnecessary, and the subcommittee agrees with the Legislative Council recommendation that this section be deleted.

REVISION OF PUBLIC DEBT ARTICLE
[Article IX in Proposed Constitution; Article XIII in Present Constitution]

COMPARISON OF PRESENT ARTICLE XIII WITH PROPOSED ARTICLE IX
AND RECOMMENDATIONS OF LEGISLATIVE COUNCIL

Present Article	Legis. Council Recommendation	Subcommittee Recommendation	Location in Proposed Article
XIII, Sec. 1	adequate	retain	Section 1
2	revise	revise	2
3	adequate	retain	3
4	adequate	retain	4
5	revise	revise	5
6	adequate	revise	6

Proposed Constitution	Present Constitution
Article IX PUBLIC DEBT	Article XIII PUBLIC INDEBTEDNESS
Comment: Proposed Articles VIII, Taxation and Finance; IX, Public Debt; and X, Trust and Legacy Fund could be combined in one article on Finance.	
Section 1. Neither the state, nor any county, city, town, municipality, nor other subdivision of the state shall ever give or loan its credit in aid of, or make any donation or grant, by subsidy or otherwise, to any individual, association, or corporation, or become a subscriber to, or a shareholder in, any company or corporation, or a joint owner with any person, company or corporation, except as to such ownership as may accrue to the state by operation or provision of law.	No change from Article XIII, Section 1.

Comment: Over half the states place restrictions on the purpose for which state and local debt may be incurred. The most common restriction of this type is that prohibiting governments from incurring debt for the purpose of subscribing for stock in, or otherwise giving aid to, private corporations. These provisions were written into constitutions as a result of the experiences of the "public improvement" programs of the early 1800's.

The subcommittee concurs with the Legislative Council conclusion that this section is adequate.

Section 2. The legislative assembly shall not in any manner create any debt except by law which shall be irrepealable until the indebtedness therein provided for shall have been fully paid or discharged; such law shall specify the purpose to which the funds so raised shall be applied and provide for the levy of a tax sufficient to pay the interest on, and extinguish the principal of such debt within the time limited by such law for the payment thereof; but no debt or liability shall be created which shall singly, or in	The legislative assembly shall not in any manner create any debt except by law which shall be irrepealable until the indebtedness therein provided for shall have been fully paid or discharged; such law shall specify the purpose to which the funds so raised shall be applied and provide for the levy of a tax sufficient to pay the interest on, and extinguish the principal of such debt within the time limited by such law for the payment thereof; but no debt or liability shall be created which shall singly, or in the aggregate with

the aggregate with any existing debt or liability, exceed the sum or one million dollars ($1,000,000) except in case of war, to repel invasion or suppress insurrection, unless the law authorizing the same shall have been submitted to the people at a general election and shall have received a majority of the votes cast for and against it at such election.

any existing debt or liability, exceed the sum of one hundred thousand dollars ($100,000) except in case of war, to repel invasion or suppress insurrection, unless the law authorizing the same shall have been submitted to the people at a general election and shall have received a majority of the votes cast for and against it at such election.
[Article XIII, Section 2]

Comment: "Generally, constitutional limits on debt are designed to protect the taxpayer by preventing legislatures from mortgaging the future with expenditures in excess of current revenues. As recently as 1954, all but 5 states (Connecticut, Mississippi, New Hampshire, Tennessee, and Vermont) has some kind of constitutional limitation of the amount, kind, and purpose of debt that could be incurred. Of the 43 states which had some kind of limitation, 20 required constitutional amendment in order to create new debt, 20 required a popular referendum, and 3 had minor procedural restrictions.

"Most of the states with constitutional limitations have specific dollar amounts that cannot be exceeded without amendment or referendum. These limits range from as low as $50,000 to as high as $2,000,000. A few of the states limit this borrowing to a percentage of assessed valuations or some other factor such a percentage of the yearly appropriations.

". . .On the other hand, it is not difficult to find situations where the existence of constitutional barriers prevented runaway borrowing and, presumably, wasteful expenditure. Overall, the evidence is not generally conclusive either way--a fact that underscores the previous assertions that each state must judge its own case primarily in the light of the facts it faces.

"When a particular state has decided it will adopt a constitutional limitation upon debt, what should be its scope? Briefly, to be effective, it should include all obligations, whether met from general or special revenues, except for those of bona fide, self-supporting, business-type ventures such as bridge commissions. The lending of use of fund for any private purpose should be specifically prohibited. To be most easily administered and meaningful, [one author] suggests the debt limit be set at not to exceed the average state revenue over the preceding five years. He notes that such a plan has the advantages of (1) flexibility by expanding or contracting with revenues; (2) exerting a steady pressure; (3) not declining sharply in periods of depression; (4) being simple enough to be succinctly expressed in a constitution; (5) leaving little room for misinterpretation by the courts; and (6) being strong enough to keep debt within safe bounds. As in most existing constitutions, this limit would be voided in connection with indebtedness incurred for suppressing insurrection or repelling invasion and for refunding.

[Frank H. Landers, "Taxation and Finance." (State Constitutional Revision, ed. W. Brooke Graves.) Chicago: Public Administration Service, 1960, pp. 232-234.]

Representative Lawrence G. Stimatz, noting this section limits the debt ceiling to $100,000, said the present limit forces "subterfuge! By subterfuge, I mean where you've got a $100,000 debt limit and $83 million of bonds outstanding [Missoulian, 6/19/68.]

There is an extensive body of case law interpreting whether certain methods of financing debts are within the meaning of this provision of the constitution. Many methods of financing debts out of special funds, from other than ad valorem taxes have been held not to create a debt or liability within the meaning of this section.

At a minimum, the subcommittee feels this section should be revised to increase the limit of $100,000, fixed in 1889, to at least $1,000,000. Additionally, the entire section should be clarified and its utility examined. Generally, the more recent changes in state constitutions and proposals for change have the objective of relaxing constitutional debt restrictions rather than imposing additional controls. There is a pattern of liberalization of restrictions over the method of authorization of debt, as well as over the amount of debt which may be incurred.

Section 3. All moneys borrowed by or on behalf of the state, or any county, town, municipality or other subdivision of the state, shall be used only for the purpose specified in the law authorizing the loan.	No change from Article XIII, Section 3.
Section 4. The state shall not assume the debt, or any part thereof, of any county, city, town or municipal corporation.	No change from Article XIII, Section 4.

Comment: See comment to Section 6 below.

Section 5. No county shall be allowed to become indebted in any manner, of for any purpose, to an amount, including existing indebtedness, in the aggregate, exceeding the limits set by law, and all bonds or obligations in excess of such amount given by or on behalf of such county shall be void. No county shall incur any indebtedness or liability for any single purpose to an amount exceeding the sum set by law	No county shall be allowed to become indebted in any manner, or for any purpose, to an amount, including existing indebtedness, in the aggregate, exceeding five (5) per centum of the value of the taxable property therein, to be ascertained by the last assessment for state and county taxes previous to the incurring of such indebtedness, and all bonds or obligations in excess of such amount given by or on behalf of such county shall be void. No

without the approval of a majority of the electors thereof, voting at an election to be provided by law.

county shall incur any indebtedness or liability for any single purpose to an amount exceeding ten thousand dollars ($10,000) without the approval of a majority of the electors thereof, voting at an election to be provided by law. [Article XIII, Section 5]

Comment: See comment Section 6 below.

Section 6. No city, town, township, school district or high school district shall be allowed to become indebted in any manner or for any purpose to an amount, including existing indebtedness, in the aggregate exceeding the limits set by law, and all bonds or obligations in excess of such amount given by or on behalf of such city, town, township, school district or high school district shall be void; and each school district and each high school district shall have separate and independent bonding capacities within the limitation of this section: provided, however, that the legislative assembly may extend the limit mentioned in this section, by authorizing municipal corporations to submit the question to a vote of the taxpayers affected thereby, when such increase is necessary to construct a sewerage system or to procure a supply of water for such municipality which shall own and control said water supply and devote the revenues derived therefrom to the payment of the debt.

No city, town, township, school district or high school district shall be allowed to become indebted in any manner or for any purpose to an amount, including existing indebtedness, in the aggregate exceeding five per centum (5%) of the value of the taxable property therein, to be ascertained by the last assessment for state and county taxes previous to the incurring of such indebtedness, and all bonds or obligations in excess of such amount given by or on behalf of such city, town, township, school district or high school district shall be void; and each school district and each high school district shall have separate and independent bonding capacities within the limitation of this section; provided, however, that the legislative assembly may extend the limit mentioned in this section, by authorizing municipal corporations to submit the question to a vote of the taxpayers affected thereby, when such increase is necessary to construct a sewerage system or to procure a supply of water for such municipality which shall own and control said water supply and devote the revenues derived therefrom to the payment of the debt. [Article XIII, Section 6]

"Every state places either constitutional or statutory limits on the power of its local governments to incur debt. The five most common types of limitations are these: (1) limits on the maximum amount of debt that may be incurred; (2) maximum time limits on the maturity of bonds; (3) maximum rates of interest that the bonds may bear; (4) restrictions on the purposes for which bonds may be issued; and (5) requirements for a referendum before bonds may be issued.

"The amount of debt that local governments may incur is usually stated as a percentage of assessed valuation. About thirty states have constitutional provisions of this nature that apply either to all local governments or to certain types. The limits range from 1.5 per cent in Washington to 25 per cent in Texas. The most generally used figure is 5 per cent, with eleven states fixing the debt limit at this level. Those states which do not fix by constitutional provision the maximum debt that a local government may incur do so by statute; those states with provisions in the constitution sometimes impose additional statutory limits which are lower than those established in the constitution.

"In some states, exemptions to the established limits are so numerous that the basic provision has virtually no effect. For example, indebtedness for such divergent projects as school buildings and storm sewers are exempt from the debt limits in Alabama. Revenue bonds, mortgage bonds, and bonds secured by special assessments are usually not subject to the debt limits.

"The overlapping of governmental units weakens the effectiveness of debt limits since each unit can incur debt up to the established limit. Only one state constitution, however, attempts to deal with this problem. South Carolina's constitution establishes a basic limit of 8 per cent and then provides that, when several municipal corporations overlap, the total debt on any property shall not exceed 15 per cent.

"Unique types of state limits on local government debt are found in North Carolina and Pennsylvania. In North Carolina, a municipality may not, without a referendum, incur debt in any fiscal year exceeding two-thirds of the amount by which its outstanding debt was reduced in the preceding year. The Pennsylvania constitution establishes a special limit for Philadelphia which allows that city to incur indebtedness up to 13.5 per cent of the average of the annual assessments for the preceding ten years.

". . .Finally, states may require that local bond issues be approved by the voters in a referendum. Referendum elections are most often required

to authorize local governments to exceed the established debt limits, but a few states require voter approval on all local bond issues. An example of the former would be Arizona, where the 4 per cent limit may be exceeded if approved by a majority vote in a referendum. Alaska and Missouri require voter approval for nearly all bond issues. The Alaska constitution requires that all bond issues except revenue bonds and special assessment bonds be approved by majority vote. The Missouri constitution requires that general obligation bonds be approved by a two-thirds majority and that revenue bonds be approved by a four-sevenths majority.

". . .Most of those who have written on this subject have been critical of certain aspects of the state-imposed restrictions on local debt and have made specific recommendations for changing them. One point on which nearly all of the critics agree is that local debt limits should not be written into state constitutions. Constitutional debt limits tend to be very rigid due to the difficulty of securing constitutional amendments, and they are, therefore, hard to adapt to changing situations as economic conditions and the needs of local governments change.

"Most writers are critical of debt limits which state the amount of debt that local governments may incur as a per cent of assessed valuation. The most important reason for this criticism is that assessed valuations usually bear little resemblance to actual property values. In most cases, the assessed value of a piece of property will be much lower than its actual value. It is also common for the level of assessed valuation to vary from place to place within a given state. For example, some areas may have assessed values of only 10 to 15 per cent of actual value while others have assessed values of over 50 per cent of actual value. This means that, although the same debt limit is legally in effect throughout the state, one local government will be able to incur much more debt than another even though the actual value of the property within the boundaries of the two governments is the same. Thus, if the debt limit is stated as a per cent of assessed valuation, the amount of debt that a local government can incur is determined not by the state but by the local assessor. Some states have attempted to solve this problem by establishing state equalization boards. The purpose of these boards is to assure that the assessed values of property are uniform throughout the state; and the boards usually have the power to change assessed values if they deem it necessary. Assessment inequalities are still common, however, and this means that debt limits stated in terms of assessed valuation will not apply uniformly throughout a state.

"Another reason for the criticism of debt limits that are linked to assessed valuation is that the assessed value of the property of a community is not a good indicator of that community's ability to support debt. Other factors such as personal income and the community's rate of growth should be considered in determining its ability to support debt. Also, if a debt limit is stated in terms of property values, the ability of local governments to borrow in times of depression will be decreased when actually it should be increased in order to take advantage of low interest and building costs.

"In spite of these criticisms of the limits placed on local debt, there is general agreement among those who have studied the subject that states should place some type of restrictions on the powers of local governments to incur debt. The justification for state action in this area is well stated by [other authors]:

> Every state has an interest in the financial stability of the cities and other local units within its boundaries. If even a few cities within the state become financially embarrassed and unable to pay their debts, the fact will soon be noised around, with the result that the state itself and all its local subdivisions will find it harder to borrow money at reasonable interest rates. The suspicion will arise that the state has low standards of financial integrity or that it has poor debt laws and poor administration. The possible effect upon business with the state is also not to be ignored. Beyond these considerations lies the desire to protect taxpayers and bond buyers. In some of the smaller and less populous areas in particular, there is not likely to be an excess of financial wisdom. Debts and taxes may be raised to a point where business is injuriously affected, and the taxpayers must carry an excessive burden. Investors, too, need some protection.

"In recent years, there have been three sets of recommendations presented for altering the methods used by states in regulating local debt: (1) the recommendations made by Kenneth Beasley in his study of local debt regulation in Kansas: (2) the recommendations made by the Advisory Commission on Intergovernmental Relations; (3) the recommendations of the National Municipal League in its Model State Constitution, Model City Charter, Model County Charter, and Model County and Municipal Bond Law.

". . .In general, it can be said that a majority of the students of this problem would agree on the following propositions: (1) laws pertaining to local debt regulation should be in statutes rather than in constitutions: (2) debt limits should be linked to some base that will make them more flexible and more indicative of the ability to support debt than limits which are based on assessed valuation; (3) a state administrative board should provide some degree of local debt supervision, although there is disagreement over whether its role should be primarily advisory or regulatory. Beyond these basic principles, there is considerable disagreement over the best way for states to limit the powers of local government to incur debt." [Leonard E. Goodall, State Regulation of Local Indebtedness in the United States, Bureau of Government Research, Research Study No. 9, Arizona State University (1964), pp. 18-20; 66-67; 71.]

"The most common type of state constitutional and statutory restrictions on local government debt is a ceiling limit related to the local property tax base. This is the pattern in Montana.

"Article XIII, Section 5 of the Montana Constitution provides that no county shall be allowed to become indebted for any purpose exceeding 5 per cent of the taxable property of the county as determined by the last assessment for state and county taxes. Neither may a county incur any debt for a single purpose exceeding $10,000 without the approval of a majority of the county electors.

"Article XIII, Section 6 of the Montana Constitution provides that no city or town may become indebted in an amount exceeding 5 per cent of the value of its taxable property as determined by the last assessment for state and county taxes. The same article provides that the legislative assembly may extend the limit if an increase is necessary to construct a sewerage system or procure a water supply, but that the question would have to be submitted to the affected voters. Statute law permits additional indebtedness, when the proposition is submitted to vote, of an amount not exceeding 10 per cent over the constitutional 5 per cent limit for severage systems and water supplies. State law also provides for the term of bonds (20 years), maximum rates of interest (6 per cent) and the details of bond sale and retirement.

". . .When the Advisory Commission on Intergovernmental Relations studied the matter of local debt restrictions in 1961, it concluded that present restrictions constitute a serious impediment to effective local self-government and moved localities toward increased financial dependence on state or federal government resources.

"Basic to the Commission's recommendations were the premises that states have a legitimate concern with the borrowing power and practices of local government, that existing legal provisions on the subject in most states were in need of intensive review and change and that constitutional provisions concerning debt and borrowing powers of local governments should be limited to basic principles.

"Among recommendations of the Commission was the suggested repeal of constitutional and statutory provisions limiting local government debt by reference to the local base for property taxation. Deficiencies of these provisions, in the view of the Commission, included emphasis on present and past conditions rather than on those of the future when long-term debt is serviced. Other weaknesses pointed out in using the property tax as the base for local indebtedness was the dealing with separate layers of local governments rather than the aggregate of local government for a particular area and the dependence on local assessment practices for the real level of debt limitation. In addition, because such provisions usually apply only to full faith and credit local debt, they offer no assurance that total local debt will be kept within prudent bounds. In place of a ceiling limit related to the local property tax base, the Commission recommended that states study and consider measures to regulate long-term borrowing of local governments by reference to the net interest cost of prospective bond issues in relation to the prevailing interest rate on high quality municipal securities. The Commission further recommended that states make available technical and advisory assistance to local governments regarding issuance of long-term debt."

[League of Women Voters of Montana, State Local Relations, Restrictions on Local Taxation and Debt (January, 1964), p. 5.]

Reviewing the recommendations, the subcommittee recommends that the state has a legitimate interest in limiting local debt and that laws pertaining to local debt regulation should be statutory rather than constitutional. The subcommittee is critical of debt limits which state the amount of debt that local government may incur as a per cent of assessed valuation because assessed valuation usually bears little resemblance to actual property values.

At a minimun, present Sections 5 and 6 should be revised as in proposed Sections 5 and 6. The revised sections give the legislature the authority to establish the limit of county debt and the size of debt for a single purpose that would require approval of the electors.

Proposed Section 6 gives the legislature the authority to establish the limit of debt for a city, town, township, school district, or high school district. The material "provided, however, that the legislative assembly may extend the limit mentioned in this section, by authorizing municipal corporations to submit the question to a vote of the taxpayers affected thereby, when such increase is necessary to construct a sewerage system or to procure a supply of water for such municipality which shall own and control said water supply and devote the revenues derived therefrom to the payment of the debt" in Section 6 is probably unnecessary if this revision is approved. The subcommittee also considered requiring the approval of two successive legislative assemblies for increases in the debt limitation.

REVISION OF TRUST AND LEGACY FUND
[Article X in Proposed Constitution; Article XXI in Present Constitution]

COMPARISON OF PRESENT ARTICLE XXI WITH PROPOSED ARTICLE X
AND RECOMMENDATIONS OF LEGISLATIVE COUNCIL

Present Article	Legis. Council Recommendation	Subcommittee Recommendation	Location in Proposed Article
X, Sec. 1	revise	revise	Section 1
2	revise	revise	1
3	revise/repeal	revise	5
4	revise	revise	1
5	revise	revise	2
6	revise	revise	1
7	revise	revise	1
8	revise	revise	2
9	revise	revise	3
10	repeal	delete	--
11	repeal	delete	--
12	revise	revise	3
13	revise	revise	3
14	revise	revise	3
15	revise	revise	4
16	revise	revise	4
17	revise	revise	5
18	repeal	delete	--

Proposed Constitution

Article X
TRUST AND LEGACY FUND

Comment: Proposed Articles VIII, Taxation and Finance; IX, Public Debt; and X, Trust and Legacy Fund could be combined in one article on Finance.

Section 1. (1) The Montana trust and legacy fund consists of:

(a) the permanent school fund;
(b) the state permanent fund;
(c) the permanent fund for the Montana University System;
(d) other permanent funds originating in land grants from the United States for institutions of higher learning and other state institutions;
(e) gifts, donations, grants, and legacies of not less than two hundred fifty follars ($250) each to the permanent school fund, state permanent fund, permanent fund for the Montana University System, and for the benefit of scientific, education, benevolent, and charitable work;
(f) all other funds in the custody of a state officer or agency that the legislative assembly may prescribe;
(g) sinking funds, permanent funds, cumulative funds, and trust funds belonging to, or in custody of, any political subdivision of the state upon request of the governing body of the political subdivision.

(2) Gifts, donations, grants, and legacies shall be administered as directed by the donor. If the donor does not direct, administration shall be as provided by law.

(3) The state treasurer shall keep the Montana trust and legacy fund separate and shall keep a permanent record of all gifts, donations, grants, and

Present Constitution

Article XXI
MONTANA TRUST AND LEGACY FUND

The state of Montana does hereby agree and covenant to accept from any natural person, or persons, from inside or outside the state, gifts, donations, grants, and legacies in any amount or value not less than two hundred fifty (%250.00) dollars each, for the creation of a state permanent revenue fund, for the creation of a state permanent school fund, for the creation of a permanent revenue fund for the university of Montana, and for the benefit of scientific, educational, benevolent and charitable work, subject, however, to all the provisions and limitations of this article.
[Article XXI, Section 1]

The state further agrees and covenants to hold in trust all such contributions (gifts, donations, grants and legacies), to administer the same perpetually, and to apply the net earnings thereof as therein directed, subject, however, to the provisions and limitations of this act.
[Article XXI, Section 2]

The state treasurer shall keep a permanent record of all such gifts, donations, grants and legacies, showing the names of the givers, the purpose of the contribution, and other essential facts relating thereto. A duplicate of this record shall be kept by the secretary of state. These records shall be preserved perpetually as a lasting memorial to the givers and their interest in society. The legislative assembly shall from time to time make provision for suitable publicity concerning these benefactors of their fellowmen.
[Article XXI, Section 4]

legacies, showing the names of the donors and purpose of the contribution. The secretary of state shall keep a duplicate of this record.

The public school permanent fund, the other permanent funds originating in land grants from the United States for the support of higher institutions of learning, and for other state institutions, subject to investment, shall be invested as parts of the Montana trust and legacy fund; so also all other funds in the custody of any officer or officers of the state, subject to investment, that the legislative assembly may prescribe. The separate existence and identity of each and every fund invested and administered as a part of the Montana trust and legacy fund shall be strictly maintained.

All investments belonging to the public school permanent fund, except investments in state farm mortgage loans, and all investments belonging to the said land grant funds, shall be transferred to the Montana trust and legacy fund at the full amounts of the unpaid balances of such investments.
[Article XXI, Section 6]

The state shall accept for investment and administration as parts of the Montana trust and legacy fund, sinking funds, permanent funds, cumulative funds and trust funds belonging to or in the custody of any of the political subdivisions of the state when requested to do so by the governing board of such political subdivision, subject, however, to such limitations as the legislative assembly may prescribe. The legislative assembly may provide for the investment and administration as a part of the Montana trust and legacy fund of any other fund subject to its power.
[Article XXI, Section 7]

Comment: Combination and revision of Sections 1, 2, 4, 6, and 7. The last two sentences of Section 4 and the last two sentences of Section 6 were deleted. The last sentence of subsection (2) was added. See comment on entire article after proposed Section 5. Subsection (3) could be revised as follows to delete references to the secretary of state and state treasurer: (3) The Montana trust and legacy fund shall be kept separate, and a permanent record of all gifts, donations, grants, and legacies, and the names of the donors and purpose of the contribution shall be maintained.

Section 2. (1) The state board of land commissioners shall invest these separate funds as one common fund known as the Montana trust and legacy fund. The board shall convert non-cash contributions to cash as soon as practicable.

(2) Investments of trust and legacy funds shall be made as prescribed by law.

The same state board and officers that have charge of the investment and administration of the public school fund of the state shall have charge of the investment and administration of all funds administered under this article. All these funds shall be invested as one common fund to be known and designated as the Montana trust and legacy fund. In case any contribution is in some other form than cash, such board shall convert it into cash as soon as practicable. [Article XXI, Section 5]

The Montana trust and legacy fund shall be safely and conservatively invested in public securities within the state, as far as possible, including school district, county and municipal bonds, and bonds of the state of Montana; but it may also be partly invested in bonds of the United States, bonds fully guaranteed by the United States as to principal and interest, and federal land bank bonds. All investments shall be limited to safe loan investments bearing a fixed rate of interest. In making long term investments preference shall be given to securities payable on the amortization plan or serially. The legislative assembly may provide additional regulations and limitations for all investments from the Montana trust and legacy fund.

All existing constitutional guarantees against loss or diversion applying to the public school fund, to the funds of the state university and to the funds of all other state institutions of learning, shall remain in full force and effect. [Article XXI, Section 8]

Comment: Combination and revision of Sections 5 and 8. The last sentence of Section 8 was deleted. Investments restrictions were removed. See comment on entire article after proposed Section 5. Subsection (1) could be revised to delete reference to the state board of land commissioners: (1) These separate funds shall be invested as one common fund known as the Montana trust and legacy fund. Non-cash contributions shall be converted to cash as soon as practicable.

Section 3. (1) The interest income shall be apportioned by the state

On the last day of March, of June, of September and of December of each year,

treasurer according to the average amount of each fund in the Montana trust and legacy fund.

(2) Except as provided in Section 4 of this article, all net earnings shall be added to the fund principals until the funds reach the amounts specified by this section and the funds shall then be used in the following manner:

(a) After the state permanent fund reaches one hundred million dollars ($100,000,000), five percent (5%) of the net earnings shall be added to the fund principal and ninety-five percent (95%) shall be used for general state expenses.

(b) After the permanent school fund reaches five hundred million dollars ($500,000,000) five percent (5%) of the net earnings shall be added to the fund principal and ninety-five percent (95%) shall be apportioned to the school districts for educational purposes as prescribed by law on the basis of aggregate school attendance of persons six (6) years of age but less than nineteen (19) years of age in each district during the preceding school year.

(c) After the permanent fund for the Montana university system reaches one hundred million dollars ($100,000,000) five precent (5%) of the net earnings shall be added to the fund principal and ninety-five percent (95%) shall be apportioned for uses prescribed by law to the university units on the basis of attendance during the preceding school year.

the state treasurer shall apportion all interest collected for the Montana trust and legacy fund during the three month period then terminating to all the separate and integral funds which constitute such fund on the day of such apportionment and which constituted parts of the fund on the first day of the three month period then terminating. The basis of apportionment shall be the average amount of each such fund between the first day and the last day of the three month period.
[Article XXI, Section 9]

All the net earnings accruing to the state permanent revenue fund shall annually be added thereto until it has reached the sum of one hundred million dollars ($100,000,000.00). Thereafter only one twentieth of the annual net earnings shall be added to the fund itself, and the remaining nineteen twentieths of the net earnings shall be used for the general expenses of the state.
[Article XXI, Section 12]

All the net earnings accruing to the state permanent school fund shall annually be added thereto until it has reached the sum of five hundred million dollars ($500,000,000.00). Thereafter only one twentieth of the annual net earnings shall be added to the fund itself, and the remaining nineteen twentieths shall annually be apportioned to the school districts of the state on the basis of the aggregate actual school attendance in each district during the preceding school or calendar year by persons between the ages of six and eighteen years and shall be used exclusively for educational purposes, subject to such regulations and limitations as may be prescribed by law.
[Article XXI, Section 13]

All the net earnings accruing to the permanent revenue fund for the university

of Montana shall annually be added thereto until it has reached the sum of one hundred million dollars ($100,000,000.00). Thereafter only one twentieth of the annual net earnings shall be added to the fund itself, and the remaining nineteen twentieths shall be apportioned to all the educational institutions then comprising the university of Montana, on the basis of the aggregate actual attendance in each institution during the preceding school or calendar year, and may be used for all purposes properly connected with the work of these institutions, subject, however, to such regulations and limitations as may be prescribed by law.
[Article XXI, Section 14]

Comment: Proposed Section 3 is a revision and combination of present Sections 9, 12, 13, and 14. See comment on entire article after proposed Section 5. Subsection (1) could be revised to delete reference to the state treasurer.

Section 4. (1) Whenever the purpose for which a contribution was made has been attained, or can no longer be ascertained, it shall be transferred to the permanent school fund. All contributions without a specified purpose shall be credited to the permanent school fund.

(2) When any permanent fund becomes so large that no increase is necessary or desirable, the legislative assembly may use all net income for the purpose for which the fund was created, or it may use five percent (5%) of the net income to create other permanent funds or for any other public purpose.

Whenever the purpose for which a certain contribution was made has been accomplished, or can no longer be ascertained or followed, then the total amount of such fund shall be transferred to the state permanent school fund and become a permanent and inviolable part thereof. All contributions without a specified purpose shall be credited to the state permanent school fund.
[Article XXI, Section 15]

Should the time ever come when any of the three aforesaid permanent funds become so large that no further increase is necessary or desirable, then, in such case, the legislative assembly shall have power to provide for the use of all of the net income from such fund for the purpose for which it was created, or it may use the one twentieth of the annual net income which was to be added to the fund itself for the creation of other permanent revenue funds, or for any other public purpose that it may deem wise; provided, however, that none of the foregoing provisions of this section shall apply to any of these funds until it has

reached the specific amount fixed by this article.
[Article XXI, Section 16]

Comment: Proposed Section 4 is a revision and combination of Section 17 and the last clause of Section 3. See comment on entire article after proposed Section 5.

Section 5. The justices of the supreme court of the state are a supervisory board and have authority over the entire administration of the fund. This board may reject any contribution that it deems unwise.

The justices of the supreme court of the state of Montana are hereby made and constituted a supervisory board over the entire administration of all the funds created or authorized by this article and the income therefrom. During January of each year, this board shall review the administration for the preceding year. It shall decide all uncertain or disputed points arising in the administration of the funds whenever requested to do so by a beneficiary, by a state official charged with some part of the administration of the fund, or any other interested party; and it may do so upon its own initiative. It shall be the duty of the supervisory board to do and perform all acts and things that it may deem necessary in order to cause the board and officers having direct charge of these funds to administer the same carefully and wisely in full compliance with the provisions of this article and such further legislation as may be enacted relating thereto. The clerk of the supreme court shall be ex-officio clerk of this supervisory board.
[Article XXI, Section 17]

The original amounts of all contributions for the state permanent revenue fund, for the state permanent school fund, and for the permanent revenue fund for the university of Montana, shall be added to such funds respectively and become inseparable and inviolable parts thereof. Contributions for other objects may contain a provision to the effect that the net earnings thereof, or part of the net earnings, shall be added to the principal for a certain length of time, or until it has reached a certain amount, or until the happening of a certain event, but such contingent event shall not be more remote

than permitted by the laws effecting perpetuities; but no contribution containing such provision as to accumulation shall be accepted by the state until it has been approved by the supervisory board hereinafter constituted, which board shall have power to reject any such contribution that it may deem unwise.
[Article XXI, Section 3]

Comment: The Montana trust and legacy fund consists of the permanent school fund, the state permanent revenue fund, the permanent fund for the Montana University System, other permanent funds for the Montana University System of other state institutions originating in land grants from the United States, gifts or legacies in excess of $250 given for specific purposes, and all other state funds subject to investment as prescribed by the law. All portions of the trust and legacy fund are invested by the State Board of Land Commissioners, and the State Treasurer must keep a record of each fund filing a duplicate copy of that record with the Secretary of State. The Supreme Court has general supervisory authority over the entire administration of the fund.

Investment of the monies in the trust and legacy fund is restricted to public securities within the state, bonds of the state, United States bonds, bonds guaranteed by the United States as to principal and interest, and federal land bank bonds. In addition to these restrictions, the legislature may further limit investments by statute. Until the funds reach specified amounts (permanent state fund $100 million, permanent school fund $500 million, and permanent revenue fund of the Montana University System $100 million), all interest income must be credited to the fund principal accounts. Thereafter, five percent of the interest income will be credited to the fund principals and the remainder will be available for state and educational expenditures. Subject to these restrictions, the legislature has authority to use all interest income for the purposes for which the funds were created "when any of the three aforesaid permanent funds become so large that no further increase is necessary or desirable. . ." [Article XXI, Section 16]

Rather than comment on individual sections contained in this article, the subcommittee has commented on the entire article. The subcommittee agrees with the Legislative Council conclusion that this article is not adequate as presently written and should be revised in its entirety.

The proposed article is the one proposed by the Legislative Council, which leaves investment restrictions to be fixed by law. In order to conform to the recommendations of the legislative and executive subcommittee regarding deletion of all constitutional administrative boards, agencies, commissions, and officers, except for the governor and lieutenant governor, subsection (3) of Section 1, subsection (1) of Section 2, and subsection (1) of Section 3 could be revised to eliminate reference to the state treasurer, secretary of state, and state board of land commissioners. See comments to these sections.

This article was added by amendment in 1924 and further amended in 1938. None of the six constitutions used by the Legislative Council for comparative purposes have similar provisions, and the subcommittee notes that the entire article is probably statutory, could be deleted and provided for by statute. In lieu of deletion of the article, the subcommittee recommends that the article be revised substantially as suggested by the Legislative Council.

In 1964, the Legislative Council recommended that Section 8, which specifies how monies may be invested, be repealed. Commenting on the Council proposal, the Commissioner of Lands and Investments in his biennial report for the period 1964-1966 stated:

> The Constitutional restrictions placed upon investments for the Montana Trust and Legacy Fund should be removed. As a result of these restrictions, the fund has actually failed to grow in purchasing power as it should have. Admittedly, funds invested in Government securities are fully guaranteed and funds invested in equities are not; however, our economy has made an impressive demonstration of its ability to weather unstabilizing events over the past thirty years. Furthermore, it should be pointed out that downward trends in the market are not as serious for institutional funds such as the Trust and Legacy, in view of its long term nature, as the same type of activity creates with the private investor.
>
> At the time the Constitution was written, investments in the business community were viewed with some misgiving and Government securities were looked upon as the only properly safe investment for sacred trust funds. Experience in the past few decades has demonstrated the fallacy of this assemption when we find the fund growing but the beneficiaries receiving less than they might in constant dollars of purchasing power. Due to these limitations the Trust and Legacy Fund has been unable to even achieve the rate of return on investments that other State funds have. The Retirement Funds, for example, in their experience with Government guaranteed mortgages and corporate utility bonds have shown that some broadened authority, even without investing in equities, allows for diversification and provides the fund manager alternative investment opportunities which can increase the return.
>
> A proposal was made before the last session [1965] of the Legislature [Subsequently the similar amendments were introduced into the 1967 and 1969 legislative sessions.] to submit to the electors of the State an amendment to Section 3, Article XXI, and the repeal of Section 8, Article XXI, of the constitution in order to allow broadened investment authority to be set by law. Although this failed to gain favorable consideration by the Assembly, it is suggested that the matter be reconsidered by the Fortieth Legislative Session. It is also suggested that upon favorable action by the Legislature and the electors,

action be taken by the Legislature in session at that time setting forth investment criteria and providing for effective administration.

Sections Deleted

The original amounts of all contributions for the state permanent revenue fund, for the state permanent school fund, and for the permanent revenue fund for the university of Montana, shall be added to such funds respectively and become inseparable and inviolable parts thereof. Contributions for other objects may contain a provision to the effect that the net earnings thereof, or part of the net earnings, shall be added to the principal for a certain length of time, or until it has reached a certain amount, or until the happening of a certain event, but such contingent event shall not be more remote than permitted by the laws effecting perpetuities; but no contribution containing such provision as to accumulation shall be accepted by the state until it has been approved by the supervisory board hereinafter constituted, which board shall have power to reject any such contribution that it may deem unwise.
[Article XXI, Section 3 (except last clause; see proposed Section 5]

The state treasurer shall keep all deposits of money belonging to the Montana trust and legacy fund separate and distinct from other deposits of money in his keeping.
[Article XXI, Section 10]

All money in any of the separate and integral funds constituting the Montana trust and legacy fund and the interest apportioned therefrom, shall be subject to payment to the person, institution or other entity entitled thereto, without appropriation by the legislative assembly, upon proper authorization as provided by law.
[Article XXI, Section 11]

The legislative assembly shall from time to time enact such further legislation as it may deem necessary to carry into effect the provisions of this article. [Article XXI, Section 18]

REVISION OF EDUCATION ARTICLE
[Article XI in Proposed Constitution; Article XI in Present Constitution]

COMPARISON OF PRESENT ARTICLE XI WITH PROPOSED ARTICLE XI
AND RECOMMENDATIONS OF LEGISLATIVE COUNCIL

Present Article	Legis. Council Recommendation	Subcommittee Recommendation	Location in Proposed Article
XI, Sec. 1	adequate	retain	Section 1
2	adequate	retain	2
3	revise	revise	3
4	adequate	revise	4
5	adequate	retain	5
6	repeal	delete	--
7	adequate	delete	--
8	adequate	retain	6
9	adequate	retain	7
10	repeal	delete	--
11	repeal	revise/delete	transfer to V, 8
12	revise	revise	8

Proposed Constitution	Present Constitution
Article XI EDUCATION	Article XI EDUCATION
Section 1. It shall be the duty of the legislative assembly of Montana to establish and maintain a general, uniform and thorough system of public, free, common schools.	No change from Article XI, Section 1.

Comment: All six constitutions used by the Legislative Council for comparative purposes have similar provisions. The supreme court has ruled this section and present section 11, which provides for the university system, are not exclusive so as to limit the legislative power to the establishment and maintenance of common schools and state institutions only. The purpose of this section is to insure a system of common schools, but there is nothing in it which limits the power of the legislature to provide for other schools. The section is not a limitation upon the legislative power, but is a solemn mandate to the legislature. [Evers v. Hudson, 36 M 135, 150, 92 P 462.]

The Enabling act required, and the 1889 convention provided, by ordinance irrevocable without consent of the United States and people of Montana:

> That provision shall be made for the establishment and maintenance of a uniform system of public schools, which shall be open to all the children of said state of Montana and free from sectarian control. [Ordinance No. 1, Part 4] [Enabling Act, Approved February 22, 1889, 25 Stat. 676]

The term "public, free, common schools, has not been defined. The Hawaii constitution provides:

> The State shall provide for the establishment, support and control of a statewide system of public schools free from sectarian control, a state university, public libraries, and such other educational institutions as may be deemed desirable, including physical facilities therefor. There shall be no segregation in public educational institutions because of race, religion or ancestry; nor shall public funds be appropriated for the support or benefit of any sectarian or private educational institution. [Article IX, Section 1.]

The provision providing for free public school system unduly hampers the legislature in making needed changes in the structure and organization of education in the state.

Present Section 7, which the subcommittee recommends be deleted, limits public free school to children and youths between the ages of six and twenty-one years of age. Other than this provision there is no constitutional definition of public school.

Section 2. The public school fund of the state shall consist of the proceeds of such lands as have heretofore been granted, or may hereafter be granted, to the state by the general government known as school lands; and those granted in lieu of such; lands acquired by gift or grant from any person or corporation under any law or grant of the general government; and of all other grants of land or money made to the state from the general government for general educational purposes or where no other special purpose is indicated in such grant; all estates, or distributive shares of estates that may escheat to the state; all unclaimed shares and dividends of any corporation incorporated under the laws of the state, and all other grants, gifts, devises, or bequests made to the state for general educational purposes.

Comment: This section earmarks certain money, including proceeds of school land to the public school fund of the state. This section is statutory and could be provided for by statute if deleted. Treasury funds should probably not be constitutional. In addition to proceeds of school lands, the public school fund is to consist of:

lands acquired by gift or grant from any person or corporation under any law or grant of the general government;

all other grants of land or money made to the state from the general government for general educational purposes, or where no other special purpose is indicated in such grant;

all estates, or distributive shares of estates that may escheat to the state;

unclaimed shares and dividends of any corporation incorporated under the laws of the state;

all other grants, gifts, devises or bequests made to the state for general educational purposes.

Section 3. The public school fund shall forever remain inviolate, guaranteed by the state against loss or diversion, to be invested under restrictions provided by law.

Such public school fund shall forever remain inviolate, guaranteed by the state against loss or diversion, to be invested, so far as possible, in public securities within the state, including school district bonds, issued for the erection of school buildings, under the restrictions to be provided by law. [Article XI, Section 3]

Comment: The Legislative Council suggested this revision, which removes the following restriction on investment: ". . .so far as possible, in public securities within the state, including school district bonds, issued for the erection of school buildings."

The present and proposed sections guarantee the public school fund against loss or diversion.

Section 4. The direction, control, leasing and sale of the school lands of the state, and the lands granted or which may hereafter be granted for the support and benefit of the various state educational institutions, shall be according to regulations and restrictions as may be prescribed by law.

The governor, superintendent of public instruction, secretary of state and attorney general shall constitute the state board of land commissioners, which shall have the direction, control, leasing and sale of the school lands of the state, and the lands granted or which may hereafter be granted for the support and benefit of the various state educational institutions, under such regulations and restrictions as may be prescribed by law. [Article XI, Section 4]

Comment: This revision deletes reference to the superintendent of public instruction, secretary of state, attorney general, and state board of land commissioners according to the recommendations of the legislative and executive subcommittee.

Section 5. Ninety-five per centum (95%) of all the interest received on the school funds of the state, and ninety-five per centum (95%) of all rents received from the leasing of school lands and of all other income from the public school funds shall be apportioned annually to the several school districts of the state in proportion to the number of children and youths between the ages of six (6) and twenty-one (21) residing therein respectively, but no district shall be

No change from Article XI, Section 5.

entitled to such distributive share that does not maintain a public free school for at least six months during the year for which such distribution is made. The remaining five per centum (5%) of all the interest received on the school funds of the state, and the remaining five per centum (5%) of all the rents received from the leasing of school lands and all other income from the public school funds, shall annually be added to the public school funds of the state and become and forever remain an inseparable and inviolable part thereof.

Comment: This section is statutory. None of the six constitutions used for comparative purposes have similar provisions. This section was amended in 1920 by adding the requirements that 95 percent of income shall be distributed and 5 percent shall be placed in the permanent school fund. A proposed amendment which would have deleted the requirement that the distribution be based upon the number of pupils between 6 and 21 years of age was rejected in 1944. The six to twenty-one classification of youth is based on present Section 7, which the subcommittee recommends be deleted.

The legislature should be given the discretion to provide for apportionment of interest received on the school funds of the state.

Section 6. Neither the legislative assembly, nor any county, city, town, or school district, or other public corporations, shall ever make directly or indirectly, any appropriation, or pay from any public fund or moneys whatever, or make any grant of lands or other property in aid of any church, or for any sectarian purpose, or to aid in the support of any school, academy, seminary, college, university, or other literary, scientific institution, controlled in whole or in part by any church, sect, or denomination whatever.

No change from Article XI, Section 8.

Comment: The subcommittee concurs with the Legislative Council conclusion that this section is adequate and should be retained.

Section 7. No religious or partisan test or qualification shall ever be required of any person as a condition

No change from Article XI, Section 9.

of admission into any public educational institution of the state, either as teacher or student; nor shall attendance be required at any religious service whatever, nor shall any sectarian tenets be taught in any public educational institution of the state; nor shall any person be debarred admission to any of the collegiate departments of the university on account of sex.

Comment: The subcommittee recommends that this section be retained, although it may be unnecessary because of the first amendment, religious and equal protection freedoms of the United States and Montana Constitutions.

Section 8. The various funds of the university system and of all other state institutions of learning shall forever remain inviolate and sacred to the purposes for which they were dedicated and shall be invested under such regulations as may be prescribed by law, and shall be guaranteed by the state against loss or diversion.

The funds of the state university and of all other state institutions of learning, from whatever source accruing, shall forever remain inviolate and sacred to the purpose for which they were dedicated. The various funds shall be respectively invested under such regulations as may be prescribed by law, and shall be guaranteed by the state against loss or diversion. The interest of said invested funds, together with the rents from leased lands or properties shall be devoted to the maintenance and perpetuation of these respective institutions. [Article XI, Section 12]

Comment: The revision was suggested by the Legislative Council, except the subcommittee restored from the present section the state guarantee against loss or diversion.

Section Transferred

The general control and supervision of the state university and the various other state educational institutions shall be vested in a state board of education, whose powers and duties shall be prescribed and regulated by law. The said board shall consist of eleven members, the governor, state superintendent of public instruction, and attorney general, being members ex-officio; the other eight members thereof shall be

appointed by the governor; subject to the confirmation of the senate, under the regulations and restrictions to be provided by law.
[Article XI, Section 11]

Comment: The subcommittee deferred making a recommendation on this section until it could be harmonized with the recommendations of the executive and legislative subcommittee. See comment to proposed Section 8 of the Executive Article for recommendations.

Sections Deleted

It shall be the duty of the legislative assembly to provide by taxation, or otherwise, sufficient means, in connection with the amount received from the general school fund, to maintain a public, free common school in each organized district in the state, for at least three months in each year.
[Article XI, Section 6]

Comment: All six constitutions used for comparative purposes require support of public schools, but none mention any minimum school term. Because Section 1 of this article requires public schools, the subcommittee concurs with the Legislative Council conclusion that this section is unnecessary and should be deleted. If a minimum school term is necessary the term should be set by statute.

The public free schools of the state shall be open to all children and youth between the ages of six and twenty-one years.
[Article XI, Section 7]

Comment: Fifteen state constitutions contain provisions which designate what "school age" may consist of. The subcommittee feels this section is statutory and should be deleted. The legislature should be given maximum discretion to provide for public education.

The legislative assembly shall provide that all elections for school district officers shall be separate from those elections at which state or county officers are voted for.
[Article XI, Section 10]

Comment: The subcommittee concurs with the Legislative Council recommendation that this section should be deleted and replaced by a statute.

These are the articles that subcommittees recommend be deleted; some sections are retained and transferred to other articles.

Article I, Boundaries

See Legislative Council comment. The subcommittee concurs with their recommendation that this article is unnecessary and should be deleted.

Article II, Military Reservations

See Legislative Council comment. The subcommittee concurs with their recommendation that this article is unnecessary and should be deleted.

Article IV, Distribution of Powers

That legislative, executive, and judicial powers should not be concentrated in the same hands is one of the fundamental postulates of American constitutional government. The principal of the separation of powers is an ideal which has never been perfectly achieved in practice. This is especially ture of regulatory agencies like the Board of Equalization and the Public Service and Railroad Commission, which have functions overlapping the traditional lines between legislative, executive and judicial activities.

Since the constitution provides for three distinct branches of government in the legislative, executive, and judicial articles the subcommittee feels this article is unnecessary and redundant.

The second portion of this article, beginning with the part, "and no person or collection of persons charged with the exercise of powers properly belonging to one of these departments shall exercise any powers properly belonging to either of the others, except as in this constitution expressly directed or permitted" has been a breeder of litigation.

An amendment to this section introduced in the 1969 Legislative Assembly would have empowered counties to make and enforce, within their limits, zoning powers, subdivision regulations, and county-wide plannings acts.

The subcommittee recommends that this section be deleted as unnecessary and a breader of litigation and potential amendment.

Article VI, Apportionment and Representation

The subcommittee feels that a separate article on apportionment is unnecessary and recommends that present section 2 and the reference to districts composed of contiguous counties in section 3 be combined and placed in the legislative article. See legislative article, proposed section 4 for revision and comment. Present section 1 which provides for apportionment of congressional districts is unnecessary and can be deleted. Representation in congress is completely controlled by federal law.

Article X, State Institutions and Public Buildings

The subcommittee feels that sections in this article are statutory or obsolete and that none of the sections in this article are necessary but section 3 as revised as recommended by the Legislative Council could be included in the Legislative Article.

Article XIV, Military Affairs

The subcommittee concludes after a review of present Article VII, section 6 and present Article XIV (Military Affairs) that a state militia is desirable, but an entire constitutional article should not be devoted to military affiars. The Commission agrees with the Legislative Council conclusion that the present Section 6, Article VII designating the governor as commander-in-chief and giving the governor the power to use the militia to "aid in the execution of laws, to suppress insurrection, or repel invasion" is adequate. The subcommittee recommends, as did the Legislative Council, that present Article XIV (Military Affairs) be deleted in its entirety.

See proposed Section 6, Executive Article and comment.

Article XV, Corporations other than Municipal

The subcommittee feels that most sections in this article are ambiguous and produce wasteful litigation. They are difficult to interpretate and most are obsolete or statutory. Many of the sections in Article XV were designed for the conditions existing at the time the constitution was drafted and are no longer necessary.

The subcommittee recommends that only 2 of the present 20 sections be retained (Sections 13, 16) and one revised (Section 3). These sections could constitute a separate article on Corporations or could be incorporated in the Legislative Article. These sections are included in the proposed legislative article as sections 21, 22, 23.

Article XVII, Public Lands

The subcommittee concurs with the Legislative Council conclusion that all three sections contained in this article should be deleted. They are statutory in nature.

Article XVII, Labor

The subcommittee concurs with the Legislative Council conclusion that this article should be deleted in its entirety. The article is statutory. These subjects should be regulated by legislative enactment.